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December 17, 2103

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The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
DEC 17 2013
Part of
Public Record

Re: Protest and Comments of B&G Foods North America, Inc.
STB Docket No. AB-1117X

Dear Ms. Brown:

Enclosed for filing in STB AB-1117X are the original and ten copies of the public version of the Protest and Comments of B&G Foods North America, Inc.

Because the Protest and Comments contain Highly Confidential and Confidential information, we are simultaneously filed under seal an original and ten copies of the Highly Confidential version of the Protest and Comments. A Confidential version will also be provided to counsel for the Petitioner in the proceeding.

Please date stamp the extra copies of this cover letter and the enclosed filing and return them to our messenger. Also, please let us know if there are any questions.

Respectfully submitted,

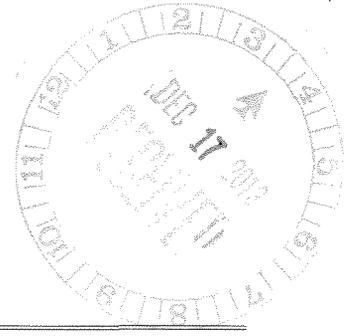


Robert D. Rosenberg
An Attorney for B&G Foods
North America, Inc.

Enclosures

cc: Eric M. Hocky, Counsel for St. Lawrence & Atlantic Railroad Company, w/encls.

235204



PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ST. LAWRENCE & ATLANTIC RAILROAD)	
COMPANY -- DISCONTINUANCE OF)	Docket No. AB-1117X
SERVICE EXEMPTION -- IN)	
ANDROSCOGGIN AND CUMBERLAND)	
COUNTIES, MAINE)	

COMMENTS AND PROTEST OF B&G FOODS NORTH AMERICA, INC.

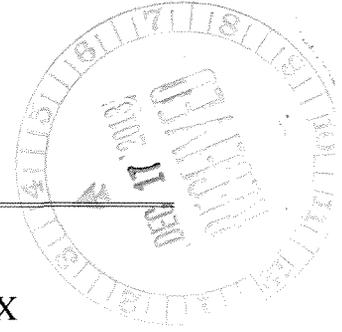
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*Attorneys for
B&G Foods North America, Inc.*

Dated: December 17, 2013

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



ST. LAWRENCE & ATLANTIC RAILROAD)		
COMPANY -- DISCONTINUANCE OF)		Docket No. AB-1117X
SERVICE EXEMPTION -- IN)		
ANDROSCOGGIN AND CUMBERLAND)		
COUNTIES, MAINE)		
)		

COMMENTS AND PROTEST OF B&G FOODS NORTH AMERICA, INC.

B&G Foods North America, Inc. (“B&G”), submits the following Comments and Protest in response to the petition for exemption that St. Lawrence & Atlantic Railroad Company (“SLA”) filed with the Surface Transportation Board (“Board” or “STB”) in STB Docket No. AB-1117X to discontinue service over a rail line of approximately 24.3 miles in Androscoggin and Cumberland Counties, Maine.

As explained below and in the accompanying verified statement of Edward Snook (“Snook VS”), the Plant Manager of B&G’s Burnham & Morrill Company (“B&M”) plant in Portland, Maine, the present and future public convenience and necessity do not support SLA’s requested exemption. SLA’s petition rests on information that is incomplete, misleading, and/or false. The proposed discontinuance will harm B&M because trucking because is not the reasonable alternative for B&M that SLA depicts in its petition. SLA has submitted no information regarding its actual costs of maintaining the line, and what information SLA has presented is overstated. SLA has made no showing that it examined or pursued other alternatives to discontinuance. There is no suggestion that SLA sought to revisit its compensation arrangements with its

connecting carriers or attempted to work with B&M to address the alleged revenue shortfall. SLA's request for an exemption under these circumstances is inappropriate. Under applicable precedent, SLA's exemption petition should be denied.

I. IDENTITY AND INTEREST IN CONTINUED RAIL TRANSPORTATION

As explained in the Snook VS, B&M began operating in Portland in 1867, and has operated at its current plant in Portland since 1913. B&M is best known for producing baked bean products made by baking beans in open pots inside brick ovens. B&M has been baking its namesake beans in this traditional manner at its Portland plant since the 1920s. Snook VS at 1. Additional information on B&M's history is available at www.bmbeans.com/.

SLA provides the only railroad service to the B&M plant, and the plant depends on SLA for deliveries of small pea beans from the Midwestern United States and Manitoba, Canada, to make its baked beans. Nearly all of the plant's pea beans are delivered by rail, in 100-ton railcars. In 2012, the plant received { } such railcars of beans. So far in 2013, the plant has received { } railcars, and another { } are expected this year. The plant expects to maintain these volumes, approximately { } railcars a year, in future years. Snook VS at 1-2.

SLA's claim in its petition that the plant will receive only { } railcars from June 1, 2013 through May 31, 2014 (SLA Petition at 3) is wrong and contrived. SLA's own records provided to B&G, included as Attachment A to the Snook VS, show the plant received { } railcars in May 2013 alone, and { } between July and November

inclusive, plus another { } railcars are expected from November 19 through the end of the year. Snook VS at 1-2 and Attachment A.¹

As SLA noted in its petition, the plant does receive some beans by truck, but the truck-delivered beans are generally not the small pea beans used to make the traditional oven-baked beans. Instead, the trucked beans usually consist of other varieties such as pinto and red kidney that are used for other products. The plant does receive some pea beans by truck in emergency situations when rail cars are not available or there are disruptions in rail service due to the weather. The trucked beans comprise only about 7% of the total bean deliveries to the plant in 2012 and 2013 combined. Snook VS at 2.

While pea beans can be trucked to the plant, doing so is very expensive. B&G's research since SLA filed its petition indicates that trucking would increase the transportation cost by over { } per year, an increase of { }. Snook VS at 3 and Attachment B. Trucking is not the reasonable option depicted by SLA. Accordingly, B&G has a vital interest in continuing to receive rail service at its plant.

¹ SLA apparently focused only on the { } railcars that B&M shipped from the Midwest in the 5 months from June to October of 2013, from which it inferred a rate of { } railcars a month. However, B&M shipped { } railcars from Manitoba during this period, making for { } railcars in { } months, an average of { } railcars per year. Adding the { } railcars that B&M shipped in May of 2013 results in { } railcars in { } months, which is equivalent { } railcars per year. In addition, B&M's shipments vary throughout the year. For example, in January and February of 2013, B&M received a total of { } railcars, which would average to { } a month or { } for the year. Snook VS, Attachment A. SLA appears to have gone out of its way to cherry-pick a low sample of shipments to make its forecast.

Moreover, SLA did not give B&G any advance notice or discussion of its discontinuance petition. Instead, B&G learned about the filing from a trade press inquiry and received a copy of the petition from SLA only later that day. Until then, SLA never indicated or suggested that its compensation arrangements were in any way inadequate or unsatisfactory. Snook VS at 1.

II. GOVERNING LEGAL STANDARD

The governing statutory standard is whether the “present or future public convenience and necessity require or permit” the proposed abandonment or discontinuance. 49 U.S.C. § 10903(d). The standard balances the potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and on interstate commerce. *Colorado v. United States*, 271 U.S. 153 (1926).

The core consideration is whether, and to what extent, shippers will be harmed if rail service is no longer available and if that harm outweighs the demonstrated harm to the railroad and interstate commerce resulting from continued operations.² The Board thus examines railroad operating profits or losses (including rehabilitation and economic costs), and the effects on shippers and communities. *Cartersville Elevator, Inc. v. ICC*, 724 F.2d 668 (8th Cir. 1984). No one factor is conclusive, and the Board has a

² *Chicago and North Western Transportation Co. -- Abandonment*, 354 I.C.C. 1, 7 (1977); *Boston and Maine Corp. -- Abandonment and Discontinuance of Service -- In Middlesex Cty., MA*, STB Docket No. AB-32 (Sub-No. 74), 1996 WL 512019 at *12 (STB served Sept. 10, 1996).

special statutory obligation to consider “whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.” 49 U.S.C. § 10903(d)(2). The carrier bears the burden of proving that continued operation would burden it and interstate commerce. *E.g., Georgia Pub. Serv. Comm’n v. ICC*, 704 F.2d 538, 545 (11th Cir. 1983); *Southern Pacific Transp. Co.--Abandonment--In El Dorado and Sacramento Ctys., CA*, ICC Docket No. AB-112 (Sub-No. 113), 1987 WL 99054 at *7 (ICC decided July 27, 1987).

The Board has established a class exemption for abandonments and discontinuances at 49 C.F.R. § 1152.50, where no local traffic has moved over the line for at least two years, any overheard traffic can be rerouted, and no complaint is pending or has recently been decided against the line. Under such circumstances, there is a reasonable basis for a (rebuttable) presumption that shippers will not be harmed, and the exemption spares the railroad the transaction costs of making a more complete filing, while preserving the ability of shippers and others to challenge the exemption. However, the class exemption is inapplicable here because, as SLA acknowledges, the line continues to serve B&M.

SLA has instead filed a petition for exemption, seeking expedited discontinuance authority without having to comply with the requirements of a full abandonment application. SLA notes that the Board has no specific requirements for such a petition beyond the need to demonstrate under 49 U.S.C. § 10502 that application of a provision (in this case, 49 U.S.C. § 10903) is not necessary to carry out the rail

transportation policy under 49 U.S.C. § 10101, and that the transaction or service is of limited scope or that application of the provision is not needed to protect shippers from the abuse of market power. SLA claims those conditions are satisfied because B&M already utilizes trucking as a fully viable transportation alternative and continued operation of its line imposes an unreasonable burden on interstate commerce. SLA Petition at 2-7.

While SLA may have made the appropriate assertions, its claims are hollow. B&M receives little of its mainstay input product by truck, and trucking is not a reasonable alternative because of the much higher cost. While SLA asserts that its revenues are sufficient to cover only its crew costs and none of its maintenance costs for the line, SLA has provided no information about its actual maintenance costs. Nor has SLA made any mention of the Short Line Tax Credit or the reported \$6.8 million it received in compensation for transferring its right-of-way to the State of Maine. SLA also makes no reference to any efforts to address any revenue shortage by other means. For example, there is no indication that SLA has sought to revise its revenue-sharing arrangements with its connecting carriers, whatever those arrangements might be.³ Nor has SLA approached B&M to seek supplemental compensation to help cover the alleged (but unsupported) maintenance shortfall.

³ B&M purchases beans on a delivered cost basis and thus has no direct knowledge of SLA's compensation arrangements. Snook VS at 3.

In short, SLA appears to have sought discontinuance as a matter of administrative convenience, without attempting to address the underlying issues that it claims warrants the discontinuance. Discontinuance exemptions should be a last resort, and not a first response to commercial difficulties. Abandonment and discontinuance is not appropriate just because a carrier's once desirable compensation arrangements have become less so, especially when the carrier has not pursued non-regulatory solutions.

SLA has not begun to meet its burden to provide an adequate record to support its discontinuance request. "Where there is an inadequate record on which to grant a petition for abandonment exemption, the petition will be denied."⁴ Accordingly, SLA's petition must be dismissed or rejected.

These matters are addressed more fully below.

III. B&M'S NEED FOR RAILROAD SERVICE AND LACK OF REASONABLE ALTERNATIVES

SLA asserts that "B&M Beans already handles much of its traffic by truck," that B&M "has motor carrier alternatives and does not need to rely on rail service

⁴ *Boston and Maine Corp.--Abandonment Exemption--In Hartford and New Haven Ctys., CT*, STB Docket No. AB-32 (Sub-No. 75X) *et al.* (STB served Dec. 31, 1996), at 5. *See also e.g. Tulare Valley RR--Abandonment and Discontinuance Exemption--In Tulare and Kern Ctys., CA*, STB Docket No. AB-397 (Sub-No. 5X) (STB served Feb. 21, 1997), at 8; *San Joaquin Valley RR--Abandonment--Kings & Fresno Ctys., Cal.*, 2 S.T.B. 270, 274-75 (1997), *petition to reopen denied* (STB served March 5, 1999); *CSX Transportation, Inc.--Abandonment Exemption--In Anderson Cty., SC*, STB Docket No. AB-55 (Sub-No. 664X) (STB served Aug. 5, 2006), at 3; *San Pedro Operating Co., LLC--Abandonment Exemption--In Cochise Cty, Ariz.*, STB Docket No. AB-441 (Sub-No. 4X) (STB served Sept. 15, 2005), at 4-5.

for its business,” and that because B&M “has (and regularly uses) other transportation alternatives, regulation is not needed to protect it from abuse of market power.” SLA Petition at 5, 7-8.

SLA’s assertions, made without consulting B&M, are unfounded. As noted above and explained in the Snook VS, B&M receives nearly all of its beans by rail. B&M receives beans by truck only when rail deliveries are not possible or practicable. Shipping beans by truck is substantially more expensive. The truck-delivered beans amount to roughly 7% of the total volume of beans received at the Portland plant. Shipping outgoing products by rail is not feasible for B&M since the shipments are too small and are transported to too many different locations. Snook VS at 2.

After SLA filed its discontinuance exemption petition, B&M, which procures beans on a delivered-cost basis, obtained information from its suppliers regarding trucking costs. The estimated cost of shipping the pea beans by rail is approximately { }, assuming { } railcars from the Midwest and { } from Manitoba. The estimate cost of shipping those beans by truck is { }, representing an increase of { } or { }. Snook VS at 3 and Attachment B.

Elimination of efficient and desirable rail transportation of its beans constitutes a substantial harm to B&M, and the potential availability of a trucking option at a substantially higher cost is not a reasonable substitute. “If the phrase ‘alternative’ is to have any meaning it must be interpreted to include transportation both logistically and economically feasible,” and there must be “substantial evidence’ to support the existence

of alternative means of transport.” *Georgia Pub. Serv. Comm’n*, 704 F.2d at 545; *accord*, *Southern Pac. Transp. Co. v. ICC*, 871 F.2d 838, 843 (9th Cir. 1989).

The elimination of such needed rail service, and the exposure of B&M to higher transportation costs, runs directly counter to the national rail transportation policy expressed at 49 U.S.C. § 10101 by undermining the development and continuation of a sound rail transportation system (4), effective competition and coordination between rail carriers and other modes (5), and reasonable rates where there is an absence of effective competition (6). In addition, SLA’s failure to pursue non-regulatory options is contrary to the policy “to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail” (1) and “to minimize the need for Federal regulatory control over the rail transportation system” (2). The discontinuance also undermines energy conservation (14) since trucking would not be as fuel efficient as rail transportation. The inconsistency with the national rail policy alone is sufficient to prevent SLA’s requested exemption. 49 U.S.C. § 10502(a)(1). Beyond that, the proposed discontinuance is not of limited scope since B&M would no longer receive the vast bulk of its beans by rail, and the discontinuance of rail service will expose B&M to an abuse of market power by forcing B&M to pay higher rates. The proposed exemption thus also fails to qualify under 49 U.S.C. § 10502(a)(2).

SLA has thus failed to meet its burden for its discontinuance request, and its exemption petition must therefore be denied on this ground alone. *See Boston and Maine* and other authority at n. 4, *supra*.

IV. SLA HAS NOT SUBSTANTIATED ITS CLAIMED BURDEN

SLA's primary theory for its discontinuance is that its revenue for handling B&M's shipments "barely covers the crew costs, and certainly does not cover the estimated maintenance costs and the additional costs of operating rail service." SLA Petition at 4.

However, SLA has provided no information concerning its actual maintenance and additional costs. SLA notes that, as a Class III carrier, it is not required to keep on-branch and off-branch costs, and thus claims to have no "specific records of the maintenance spent on the Line." SLA Petition at 4. Instead, SLA inferred a cost of \$157,495 per year based on the \$6,500 per mile cost that BN presented in in *Burlington Northern Railroad Company--Abandonment--In Crawford and Labette Counties, KS*, ICC Docket No. AB-6 (Sub-No. 300) (Feb. 1, 1989), 1989 ICC Lexis 22 at *17, 1989 WL 237878. A footnote notes SLA's belief that maintenance costs for its line would be higher because of the snow in Maine. SLA Petition at 4 & n.3.

SLA's claimed lack of data is highly suspect. Even a Class III carrier needs to track maintenance on its lines to ensure that the line is properly maintained and to demonstrate its compliance with safety and other regulatory requirements. Such compliance cannot be readily achieved or verified without accurate maintenance records. Moreover, SLA is part of Genesee & Wyoming Inc. ("G&W"), a very large Class III operator that stresses the efficiencies and effectiveness of its short-line operations.

For example, G&W states in its Annual 10-K report for 2012⁵ that it maintains proper and effective internal control over financial reporting, including “policies and procedures that ... pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions” of its assets. G&W 2012 10-K at 84. SLA’s professed lack of maintenance records does not square with the representations in the annual report. The report further notes that G&W generally outsources capital spending for railroad maintenance, again indicating that SLA should have records of such maintenance activities. *Id.* at 75 (further noting that G&W “generally do[es] not incur significant rail grinding or ballast cleaning expenses”).

Even if SLA truly lacks relevant data, SLA’s claim that the maintenance costs of a BN line in Kansas in 1989 constitute a reasonable proxy for those of a Maine line in 2013 is dubious. While SLA notes there is more snow in Maine than in Kansas, snow is not the only factor to be considered. The SLA trains for B&M run infrequently, and SLA should have some record of how often plowing and salting actually occurs. A more meaningful comparison is that BN’s base year reflected 150 carloads, roughly { } times as many cars as SLA handles. 1989 WL 237878 at *1. Furthermore, the BN line consisted of “excepted” track, *id.* at *4, whereas SLA’s track is in FRA Class 2 condition. SLA Petition at 3. Excepted track handling substantially greater traffic is apt to need more thorough monitoring and maintenance compared to Class 2 track facing only

⁵ Referenced pages of the report are included as Exhibit A.

sporadic use. Furthermore, BN had embargoed its line due to flooding, 1989 WL 237878 at *2, suggesting that water conditions were a problem at other times, leading to higher maintenance. These factors indicate that the BN line would have higher maintenance costs than the SLA line. In addition, SLA did not make any comparison as to the length and type of bridges on the two lines, which could bear substantially on maintenance needs.

SLA also has not shown that the unit costs that BN experienced in the late 1980s are comparable to those that SLA currently faces. While there has been input price inflation since that time, there have also been substantial improvements in productivity, such as maintenance-of-way technologies, equipment, and methods that offset the effects of inflation. Moreover, BN's maintenance was likely conducted by unionized crews with more onerous work rules than confront SLA. G&W touts that “[w]e focus on lowering operating costs and historically have been able to operate acquired rail lines more efficiently than they were operated before our acquisition. We typically achieve efficiencies by lowering administrative overhead, consolidating equipment and *track maintenance contracts*...” 2012 10-K at 5 (emphasis added), 75 (noting G&W's outsourcing). SLA has thus failed to meet its burden to demonstrate the maintenance costs that provide the ostensible impetus for its discontinuance petition.

Furthermore, even if the BN's maintenance costs from the 1980s were otherwise a reasonable proxy for the SLA's maintenance costs, the BN figure would still be substantially overstated because of SLA's failure to reflect the impact of the Short

Line Tax Credit. G&W deems the tax credit to be sufficiently material to warrant separate discussion at page 29 of its 2012 10-K. G&W explains that the tax credit equals 50% of qualified maintenance expenditures, up to \$3,500 per mile. The tax credit thus appears to cut SLA's claimed effective maintenance costs in half, a reduction that certainly seems worth mentioning. The tax credit was extended through 2013 and, if history is any guide, will be extended further. However, SLA ignores the tax credit altogether, further undermining any remaining credibility of its claims.

SLA has not shown that a maintenance cost burden of \$157,498 (or, more likely, \$78,749) constitutes an undue burden on interstate commerce or SLA itself. There is no suggestion that SLA is losing money overall. The \$157,498 is roughly {

}. In addition, the \$157,495 represents just 2.3% of the \$6.8 million that SLA received from conveying the right-of-way for the line to the State of Maine. *See*, http://www.pressherald.com/news/Hauling_beans_for_B_M_not_paying_off_for_railroad_.html (Nov. 16, 2013). Within the context of that payment, the claimed, but unsubstantiated, maintenance costs do not constitute an unreasonable burden on interstate commerce, especially if the tax credit is considered.

V. SLA HAS NOT PURSUED OTHER OPTIONS

A further reason for denying the discontinuance petition is that there is no indication that SLA has pursued other alternatives such as consulting with its connecting carriers or seeking to work with B&M. Filing for discontinuance and abandonment

should be measures of last resort, not first choices, and petitions for exemption should not be pursued until a carrier has explored potentially viable alternatives for continuing service. The national rail transportation policy is “to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail” and “to minimize the need for Federal regulatory control over the rail transportation system.” 49 U.S.C. § 10101(1), (2). Discontinuance should not be pursued, or permitted, just because an arrangement turns improvident after a period of time.

SLA claims that its compensation has become inadequate due to a decline in volumes. If so, then SLA’s first response, if it cannot increase those volumes, should be to seek to revisit those compensation arrangements in light of changed circumstances. However, SLA’s petition is silent regarding such efforts.

B&M does not pay SLA directly and thus lacks knowledge as to SLA’s compensation arrangements, *e.g.*, whether SLA charges the bean vendors directly or receives a fee from the connecting carriers. In either event, SLA is not without leverage. In particular, if SLA’s discontinuance forces B&M to shift to an all-truck transportation of its beans, then SLA’s connecting carriers would also experience a loss of otherwise desirable volumes to trucking. Under such circumstances, the connecting carriers might well be willing to reduce their division and increase SLA’s compensation in order to continue to receive some margins on the B&M traffic. {

}

Keeping SLA operational would also help preserve the possibility of additional traffic on the SLA line in the future.

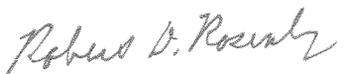
VI. SLA'S PETITION MUST BE DENIED

SLA has justified neither an exemption nor a discontinuance of service over its line.

Exemptions are appropriate only in relatively "clean" cases, where the carrier meets its burden to make a clean and clear showing that a fuller administrative proceeding is not needed. SLA has made no such showing. SLA has understated the level of B&M's traffic and need for rail service, provided no sound evidence of its maintenance costs, and ignored the Short Line Tax Credit, the large payments it has already received, and other options that would allow it to cover its claimed maintenance costs.

SLA's petition must thus be denied.

Respectfully submitted,

Robert D. Rosenberg 
Stephanie M. Archuleta
Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

*Attorneys for
B&G Foods North America, Inc.*

Dated: December 17, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of December, 2013, caused copies of the foregoing Comments and Protest to be served on all known parties of record in STB Docket No. AB-1117X.



Robert D. Rosenberg

VERIFIED STATEMENT OF EDWARD SNOOK

VERIFIED STATEMENT OF EDWARD SNOOK

I, Edward Snook, hereby state as follows:

I am the plant manager for the Burnham & Morrill Company (B&M) plant in Portland, Maine. B&M is a division of B&G Foods North America, Inc.

B&M has conducted operations in Portland, Maine since 1867 and has been operating at its current plant in Portland since 1913. B&M is best known for producing baked bean products made by baking beans in open pots inside brick ovens. B&M has been baking its namesake beans in this traditional manner at its Portland plant since the 1920s. Additional information on B&M's history is available at www.bmbeans.com/.

The St. Lawrence and Atlantic Railroad Company (SLA) is the only railroad that serves the B&M plant. The plant depends on SLA for deliveries of small pea beans from the Midwestern United States and Manitoba, Canada, to make baked beans. I am submitting this statement to respond to various claims made by SLA in the petition it filed to discontinue service over the railroad line that serves the B&M plant.

SLA did not consult with B&M or B&G before it filed its petition. We had no advance notice that SLA would be seeking to discontinue service or that SLA considers the transportation arrangement to be unsatisfactory. We first learned of SLA's petition when we received an inquiry from the trade press, and we received a copy of the public version of the SLA petition later that day.

B&M's Portland plant receives the vast majority of its pea beans by rail, in 100-ton railcars. After we received SLA's petition, we asked SLA for information about our level of rail shipments. The information that SLA has provided is contained in the

email that is included as Attachment A to this statement. SLA's data shows that we received { } railcars in 2012, or a total of { } million pounds. From January 1, 2013 through November 19, 2013, we received { } railcars, and we expect to receive another { } railcars in 2013, for a total of { } railcars or { } million pounds.

B&M expects the plant to maintain these volumes, roughly { } railcars a year, in the future. SLA's forecast that B&M will receive only { } railcars of beans from June 1, 2013 through May 31, 2014, is flawed and inaccurate, and does not reflect any consultations with B&M.

The B&M plant receives some beans by truck such as pinto and red kidney that are used to make other products. We receive these beans in 22-ton truckloads because the volumes are not sufficient to justify use of rail delivery, and we would be unable to handle and store 100-ton deliveries of these other beans at our plant.

We also receive some pea beans to make our namesake product by truck, but only in emergency situations when rail car beans are not available or in the winter when there may be disruptions in rail service due to the weather. In 2012, we received { } trucks, totaling { } pounds, of pea beans, and in 2013, we received { } trucks, totaling { } pounds, of pea beans. In 2012 and 2013 combined, we will have received { } million pounds of beans in total, of which only { } million pounds will consist of trucked beans. The trucked beans will amount to about 7% of our total bean deliveries.

It is not feasible for the plant to ship outgoing product by rail since the shipments are too small and are transported to too many different locations.

B&M purchases its pea beans from its vendors on a delivered-cost basis. Accordingly, we do not normally know what our suppliers pay for transportation. Also, since we do not pay SLA directly, we do not know, apart from SLA's petition, what compensation SLA receives for delivering railcars to us. SLA has not contacted us to discuss its compensation arrangements.

After receiving SLA's petition, we contacted our bean suppliers to determine the impact that switching from rail to truck would have on the transportation costs, which we expect that our suppliers would pass through to us. Attachment B summarizes that information. As shown on Attachment B, our estimated cost of shipping the beans by rail is approximately { }, assuming { } railcars from the Midwest and { } from Manitoba. If those beans were shipped instead by truck, the estimated cost would be approximately { }, an increase of { } or { }.

VERIFICATION

I, Edward Snook, declare under penalty of perjury, that the foregoing Statement is true and correct, and that I am qualified and authorized to file this Statement.


Edward Snook

Dated: 12-16-2013

ATTACHMENT A

ATTACHMENT B

EXHIBIT A

Excerpts from 2012 Annual 10-K Report of Genesee & Wyoming, Inc.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended **December 31, 2012**
or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____
Commission File No. **001-31456**

GENESEE & WYOMING INC.
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	06-0984624 (I.R.S. Employer Identification No.)
66 Field Point Road, Greenwich, Connecticut (Address of principal executive offices)	06830 (Zip Code)

(203) 629-3722
(Registrant's telephone number, including area code)
Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Class A Common Stock, \$0.01 par value	NYSE
5.00% Tangible Equity Units	NYSE

Securities registered pursuant to Section 12(g) of the Act:
None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulations S-K (§229.405 of this chapter) is not contained herein and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "accelerated filer," "large accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large Accelerated Filer	<input checked="" type="checkbox"/>		Accelerated Filer	<input type="checkbox"/>
Non-Accelerated Filer	<input type="checkbox"/> (Do not check if a smaller reporting company)		Smaller Reporting Company	<input type="checkbox"/>

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12-b of the Act). Yes No

Aggregate market value of Class A Common Stock held by non-affiliates based on the closing price as reported by the New York Stock Exchange on the last business day of the registrant's most recently completed second fiscal quarter: \$2,084,513,852. Shares of Class A Common Stock held by each executive officer and director have been excluded in that such persons may be deemed to be affiliates. The determination of affiliate status is not necessarily a conclusive determinant for other purposes.

Shares of common stock outstanding as of the close of business on February 25, 2013:

Class	Number of Shares Outstanding
Class A Common Stock	51,412,303
Class B Common Stock	1,728,952

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement to be filed pursuant to Regulation 14A not later than 120 days after the end of the fiscal year ended December 31, 2012 in connection with the Annual Meeting to be held on May 22, 2013 are incorporated by reference in Part III hereof and made a part hereof.

- *Focused Regional Marketing.* We generally build and operate each of our regions on a base of large industrial customers and seek to grow rail traffic through marketing efforts. As a result of the acquisition of RailAmerica, we expect our expanded North American footprint will provide us with greater visibility to new commercial and industrial development opportunities in North America and increase the success of our marketing efforts. We also pursue additional sources of revenue by marketing to new industrial customers and providing ancillary rail services. These ancillary rail services include railcar switching, repair, storage, cleaning, weighing and blocking and bulk transfer, which enable shippers and Class I carriers to move freight more easily and cost-effectively. Separately, in Australia and Europe, where there are open access regimes, we are able to compete for new business opportunities with customers anywhere on the open access rail network.
- *Lower Operating Costs.* We focus on lowering operating costs and historically have been able to operate acquired rail lines more efficiently than they were operated before our acquisition. We typically achieve efficiencies by lowering administrative overhead, consolidating equipment and track maintenance contracts, reducing transportation costs and selling surplus assets.
- *Efficient Use of Capital.* We invest in track and rolling stock to ensure that we operate safe railroads that meet the needs of customers. At the same time, we seek to maximize our return on invested capital by focusing on cost effective capital programs. For example, in our short haul and regional operations in North America, we typically rebuild older locomotives rather than purchase new ones and invest in track at levels appropriate for traffic type and density. In addition, because of the importance of certain customers and railroads to the regional economies, we are able, in some instances, to obtain state, provincial and/or federal grants to upgrade track. Typically, we seek government funds to support investments that otherwise would not be economically viable for us to fund on a stand-alone basis.

To assist our local management teams, we provide commercial and operational support from corporate staff groups where there are benefits to be gained from centralized expertise. Our commercial group assists local management by providing assistance with regional pricing, origin and destination offerings across the Company, managing real estate revenue (including from land leases and crossing and access rights), industrial development project expertise, 24/7 customer service and Class I relationship management. Our operations department assists with the implementation of our safety culture and training programs, manages a centralized purchasing staff to leverage our scale in purchasing rail and rail-related equipment, assists with efficient equipment utilization and service design, and provides mechanical, locomotive and bridge engineering expertise. In addition, we maintain other traditional, centralized functions, such as accounting, finance, legal, corporate development, government and industry affairs, human resources and information technology.

Acquisition and Investment Strategy

Our acquisition and investment strategy includes the acquisition or long-term lease of existing railroads, as well as investment in rail equipment and/or track infrastructure to serve new and existing customers. Since 1985, we have completed 37 acquisitions and made several significant rail equipment investments to serve customers that are developing natural resource projects, such as iron ore mines. Historically, our acquisition, investment and long-term lease opportunities have been from the following five sources:

- Acquisitions of other regional railroads or short line railroads in the United States and Canada, such as our acquisitions of RailAmerica in 2012, Arizona Eastern Railway Company (AZER) in 2011, CAGY Industries, Inc. in 2008, the Ohio Central Railroad System in 2008 and Rail Management Corporation in 2005. Based on Association of American Railroads (AAR) data, as of December 31, 2011, there were approximately 460 short line and regional railroads in the United States not owned by us;
- Investments in track and/or rolling stock to support new industrial or mineral development in new or existing areas of operations, such as our long-term rail services agreement with Labrador Iron Mines Limited (LIM) to haul unit trains of iron ore over LIM's six-kilometer railway, and our recently announced expansion of two existing rail haulage contracts to transport export iron ore in South Australia;
- Acquisitions of international railroads, such as our acquisitions of FreightLink Pty Ltd (FreightLink) in Australia and Rotterdam Rail Feeding (RRF) in the Netherlands. We believe that there are additional acquisition and investment opportunities in Australia, Europe and other international markets;
- Acquisitions or long-term leases of branch lines of Class I railroads, such as our recent lease from Norfolk Southern Railway Company (NS) of the Columbus & Chattahoochee Railroad, Inc., a 26-mile segment of NS track that runs from Girard, Alabama to Mahrt, Alabama; and

The United States Short Line Tax Credit expires on December 31, 2013. As a result, our effective tax rate in 2014 will be higher if the credit is not extended.

Since 2005, we have benefited from the effects of the United States Short Line Tax Credit, which is an income tax credit for Class II and Class III railroads to reduce their federal income tax based on qualified railroad track maintenance expenditures (the Short Line Tax Credit). Qualified expenditures include amounts incurred for maintaining track, including roadbed, bridges and related track structures owned or leased by a Class II or Class III railroad. The credit is equal to 50% of the qualified expenditures, subject to an annual limitation of \$3,500 multiplied by the number of miles of railroad track owned or leased by the Class II or Class III railroad as of the end of their tax year. On January 2, 2013, the Short Line Tax Credit (which had previously expired on December 31, 2011) was extended for 2012 and 2013. The most recent extension of the Short Line Tax Credit only extended the credit through December 31, 2013. If the Short Line Tax Credit is not extended for additional tax years, the loss of the credit will increase our effective tax rate and reduce our reported earnings per share.

If the earnings of our controlled foreign subsidiaries were required to be distributed, our effective tax rate could be higher.

We file a consolidated United States federal income tax return that includes all of our United States subsidiaries. Each of our foreign subsidiaries files appropriate income tax returns in each of their respective countries. No provision is made for the United States income taxes applicable to the undistributed earnings of our controlled foreign subsidiaries. The amount of those earnings was \$251.4 million as of December 31, 2012. Although it is our current intention to fully utilize those earnings in the operations of our controlled foreign subsidiaries, if the earnings were required to be distributed in the future, those distributions may be subject to United States income taxes (appropriately reduced by available foreign tax credits) and withholding taxes payable to various foreign countries, and could result in a higher effective tax rate for us, thereby reducing our earnings. See "Part II Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Cash Repatriation" for additional information.

Non-U.S. holders who own or owned more than a certain ownership threshold may be subject to United States federal income tax on gains realized on the disposition of the shares of Class A common stock.

It is possible that we are a United States real property holding corporation currently or will become one in the future for United States federal income tax purposes. If we are or become a United States real property holding corporation, so long as Class A common stock continues to be regularly traded on an established securities market, only a non-U.S. holder (i.e., a holder that is not a United States citizen or resident, a corporation organized under the laws of the United States or any state thereof and certain trusts and estates) who holds or held (at any time during the shorter of the five year period preceding the date of disposition or the holder's holding period) more than 5% of Class A common stock will be subject to United States federal income tax on the disposition of Class A common stock. Non-U.S. holders should consult their own tax advisors concerning the consequences of disposing of shares of our Class A common stock.

Critical Accounting Policies and Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to use judgment and to make estimates and assumptions that affect business combinations, reported assets, liabilities, revenues and expenses during the reporting period. Management uses its judgment in making significant estimates in the areas of recoverability and useful life of assets, as well as liabilities for casualty claims and income taxes. Actual results could materially differ from those estimates.

Business Combinations

We account for businesses we acquire using the acquisition method of accounting. Under this method, all acquisition-related costs are expensed as incurred. We record the underlying net assets at their respective acquisition-date fair values. As part of this process, we identify and attribute values and estimated lives to property and equipment and intangible assets acquired. These determinations involve significant estimates and assumptions, including those with respect to future cash flows, discount rates and asset lives, and therefore require considerable judgment. These determinations affect the amount of depreciation and amortization expense recognized in future periods. The results of operations of acquired businesses are included in our consolidated statement of operations beginning on the respective business's acquisition date.

Property and Equipment

We record property and equipment at cost. We capitalize major renewals or improvements, but routine maintenance and repairs are expensed when incurred. We incur maintenance and repair expenses to keep our operations safe and fit for existing purpose. Major renewals or improvements, however, are undertaken to extend the useful life or increase the functionality of the asset, or both.

When assessing spending for classification among capital or expense, we evaluate the substance of the respective spending. For example, costs incurred to modify a railroad bridge, either through individual projects or pre-established multi-year programs, which substantially upgrade the bridge's capacity to carry increased loads and/or to allow for a carrying speed beyond the original or existing capacity of the bridge, are capitalized. However, costs for replacement of routinely wearable bridge components, such as plates or bolts, are expensed as incurred. Other than a *de minimis* threshold under which costs are expensed as incurred, we do not apply pre-defined capitalization thresholds when assessing spending for classification among capital or expense.

Unlike the Class I railroads that operate over extensive contiguous rail networks, our short line and regional railroads are geographically disparate businesses that transport freight over relatively short distances. As a result, we typically incur minimal spending on self-constructed assets and, instead, the vast majority of our capital spending relates to purchased assets installed by professional contractors. We also generally do not incur significant rail grinding or ballast cleaning expenses. However, if and when such costs are incurred, they are expensed.

The following table sets forth our total net capitalized major renewals and improvements versus our total maintenance and repair expense for the years ended December 31, 2012, 2011 and 2010 (dollars in thousands):

	2012	2011	2010
Gross capitalized major renewals and improvements	\$ 116,222	\$ 107,419	\$ 111,747
Grants from outside parties	39,632	22,642	40,802
Net capitalized major renewals and improvements	<u>\$ 76,590</u>	<u>\$ 84,777</u>	<u>\$ 70,945</u>
Total repairs and maintenance expense	<u>\$ 180,282</u>	<u>\$ 172,396</u>	<u>\$ 128,191</u>

REPORT OF MANAGEMENT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Management of Genesee & Wyoming Inc. is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) or 15d-15(f) under the Securities Exchange Act of 1934, as amended. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America. Internal control over financial reporting includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Genesee & Wyoming Inc.;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United States of America;
- provide reasonable assurance that our receipts and expenditures are being made only in accordance with the authorization of management and directors of Genesee & Wyoming Inc.; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the consolidated financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2012. Management based this assessment on criteria for effective internal control over financial reporting described in the Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's internal controls over financial reporting, established and maintained by management, are under the general oversight of the Company's Audit Committee. Management's assessment included an evaluation of the design of our internal control over financial reporting and testing of the operating effectiveness of our internal control over financial reporting.

We have excluded RailAmerica from our assessment of internal control over financial reporting, which was acquired in a purchase business combination on October 31, 2012 and whose total assets represent 34% of the Company's consolidated total assets at December 31, 2012.

Based on this assessment, management determined that, as of December 31, 2012, we maintained effective internal control over financial reporting.

PricewaterhouseCoopers LLP, an independent registered public accounting firm, which has audited and reported on the consolidated financial statements contained in this Annual Report on Form 10-K, has audited the effectiveness of the Company's internal control over financial reporting as stated in their report which is included herein under "Part IV. Item 15. Exhibits, Financial Statements and Schedules."