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June 17, 2014

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ENTERED
Office of Proceedings
June 17, 2014
Part of
Public Record

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

Re: Request of New England Central Railroad, Inc.
to Set Trackage Rights Terms and Conditions (color copy included)
STB Docket No. FD 35842

Dear Ms. Brown:

Enclosed for e-filing is the Request of New England Central Railroad, Inc. to Set Trackage Rights Terms and Conditions. Also enclosed (as a confidential document) is the authorization for payment of the applicable filing fee of \$250.00.

Please let me know if there are any questions regarding this filing. Thank you for your assistance.

Respectfully,

CLARK HILL PLC


Eric M. Hocky

EMH/dml
Encls.

FILED
June 17, 2014
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
June 17, 2014
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35842

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

REQUEST OF NEW ENGLAND CENTRAL RAILROAD, INC.
TO SET TRACKAGE RIGHTS TERMS AND CONDITIONS

(color copy included)

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Dated: June 17, 2014

Attorneys for
New England Central Railroad, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35842

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

**REQUEST OF NEW ENGLAND CENTRAL RAILROAD, INC.
TO SET TRACKAGE RIGHTS TERMS AND CONDITIONS**

This Request is filed by New England Central Railroad, Inc. (“NECR”) to request that the Board establish the terms and conditions for trackage rights imposed by the Interstate Commerce Commission (“ICC”) in *Amtrak – Conveyance of B&M in Conn River Line in VT & NH*, ICC Finance Docket No. 31250, 4 ICC 2d 761 (1988) (“*Amtrak I*”), and 6 ICC 2d 539 (1990) (“*Amtrak II*”). In particular, NECR requests that the Board segregate the trackage rights into two separate orders, one for the Former B&M Line and one for the CV Lines (as defined below), and that the Board reset the terms and conditions for both, including without limitation, the terms of compensation (including reimbursement for capital improvements), operation, insurance and liability.

NECR believes that the terms and conditions can be resolved by the Board based on submissions of written statements, and accordingly that the Board should initiate a proceeding pursuant to its modified procedures as set forth in 49 CFR Part 1112. In support of its request, NECR states as follows:

1. In *Amtrak I*, the ICC required Boston & Maine Corporation (“B&M”) to convey its 48.8 mile “Connecticut River Line” (also referred to as the “Former B&M Line”) between

Windsor, Vermont, and Brattleboro, Vermont, to the National Railroad Passenger Corporation (“Amtrak”), subject to the requirement that Amtrak grant specified trackage rights back to B&M.

2. The ICC in *Amtrak I* also authorized Central Vermont Railway, Inc. (“CV”) to acquire the Former B&M Line from Amtrak and to operate it, subject to B&M’s trackage rights.
3. CV and B&M were directed to negotiate a trackage rights arrangement. During their negotiations, the carriers operated under a temporary trackage rights agreement.
4. When the parties were unable to agree on certain terms for a permanent agreement, the ICC issued a decision in *Amtrak II* resolving the disagreements between the parties, and adopting the trackage rights terms and conditions attached as an appendix to that decision, referred to as the “the trackage rights order” (“TO”). For reference, a copy of the TO is attached hereto as Exhibit A.
5. By agreement of the parties at the time, the TO covered not only the Former B&M Line, but also the adjoining 13.4 mile line between White River Junction, Vermont, and Windsor, Vermont, and the approximately 10.6 mile line between Brattleboro, Vermont and East Northfield, Massachusetts (together the “CV Lines”) over which B&M previously had trackage rights so that there would be a single trackage rights arrangement to cover the lines then-owned by CV. *Amtrak II*, 1990 ICC LEXIS at *6-*7; TO, ¶¶ 0.7, 0.11 and 1.1. A map showing the Former B&M Line and the CV Lines is attached hereto as Exhibit B.
6. As a result of combining the lines covered by the TO, certain terms that had applied to the trackage rights over the CV Lines (including without limitation increases in rates to

account for capital improvements, and termination provisions) were not reflected in the TO.

7. In subsequent transactions, NECR acquired CV's assets, including its rights and responsibilities under the TO, and B&M assigned its trackage rights over the line to its subsidiary, Springfield Terminal Railway Company ("ST"). *Boston & Maine Corporation and Springfield Terminal Railway Company v. New England Central Railroad, Inc.*, STB Finance Docket No. 34612 (served January 10, 2006), at 2.
8. More recently, the trackage rights and the rights and responsibilities under the TO were assigned by B&M and ST to Pan Am Southern LLC ("PAS"), although ST continues to operate the lines on behalf of PAS. *See Norfolk Southern Railway Company, Pan Am Railways, Inc., et al. – Joint Control and Operating/Pooling Agreements – Pan Am Southern LLC*, STB Finance Docket No. 35147 (and related filings) (served March 10, 2009) (the "*PAS Control Proceeding*").
9. The TO contains limitations on the capital improvement costs that could be passed on to PAS, and on the total amount of trackage rights compensation for which PAS could be responsible. These restrictions applied only to the Former B&M Line, and not to the CV Lines. TO, ¶¶ 3.1, 3.3
10. During the term of the TO, significant improvements have been made to the trackage rights line such that the line is currently in FRA Class 3 condition.
11. The TO specifically provided that its provisions were binding for only twenty years, and left open the establishment of revised terms and conditions after twenty years. Paragraph 2.2 of the TO provides in part:

After 20 years from the Conveyance Date, either party to this agreement may seek modifications from the other, and if satisfactory modifications

are not agreed to after a reasonable period for negotiation, may apply to the ICC for modifications. Nothing in this section shall authorize the ICC to impose arbitration requirements upon either party to this Agreement.

See also Amtrak II, 1990 ICC LEXIS at *14-*15

12. It has been more than 20 years since the Conveyance Date of September 9, 1988. TO, ¶ 0.5.
13. NECR does not believe that the current adjusted rate of 44.72891 ~~cents~~ per car mile adequately accounts for the variable costs incurred by NECR attributable to PAS's operations, PAS's proportionate share of track maintenance and operating expenses, and compensation for PAS's use of the capital dedicated to the track by NECR. Further, NECR does not believe that the TO reflects current market rates for trackage rights over FRA Class 3 track .
14. NECR also believes that the other terms and conditions of the TO, including without limitation compensation (including reimbursement for capital improvements), operation, insurance and liability insurance and liability, do not reflect current standards for trackage rights agreements.
15. NECR met with PAS/ST on December 20, 2013, to discuss modifications to the terms of the TO, including an increase in the trackage rights fee.
16. NECR followed up with a letter dated January 7, 2014, giving PAS/ST a reasonable period of sixty days to negotiate modifications sought by NECR.
17. The parties met again on January 30, 2014, to discuss NECR's proposed modifications. PAS/ST indicated their view that the parties were at an impasse, and that they understood that after the sixty day period set forth in the January 7 letter, either party could seek relief from the Board.

18. Under *Amtrak II*, and the TO, the Board's predecessor reserved the right for the Board to set the terms and conditions of the trackage rights if the parties were unable to agree on updated terms and conditions.
19. The Board should in this proceeding adopt a new trackage rights order applicable to the trackage rights over the Former B&M Line, with new terms and conditions to be established by the Board.
20. The Board should also in this proceeding adopt a new trackage rights order applicable to the trackage rights over the CV Lines, with new terms and conditions to be established by the Board consistent with its separate history of ownership.
21. NECR believes that the terms of the new trackage rights orders should apply beginning with the expiration of the sixty day notice period, i.e., as of March 8, 2014.

Proposed Schedule

NECR proposes the following schedule for the proceeding:

- | | | |
|-----|-----|--|
| Day | -0- | Board institutes a proceeding and establishes a schedule |
| Day | 75 | NECR submits its opening statement |
| Day | 105 | PAS submits its reply statement |
| Day | 135 | NECR submits its rebuttal |

NECR anticipates that each party would provide its workpapers to the other party subject to the entry of an appropriate protective order.

Service

The TO was assigned to PAS in the transaction approved by the Board in the *PAS Control Proceeding*. To ensure that all potentially affected parties have knowledge of this proceeding, NECR has served all of the Applicants in the *PAS Control Proceeding*. See the certificate of service attached hereto.

Mediation

NECR would be willing to participate in mediation by the Board in accordance with 49 CFR Part 1109.

Conclusion

For the foregoing reasons, NECR requests that the Board institute a modified procedure proceeding in accordance with the schedule proposed herein, to adopt new trackage rights orders with revised terms and conditions that should apply from the expiration of the sixty day notice period forward.

Respectfully submitted,



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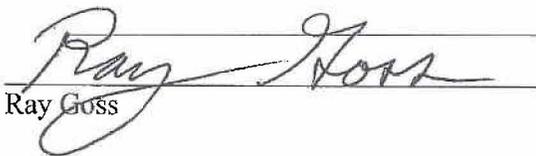
Dated: June 17, 2014

Attorneys for
New England Central Railroad, Inc.

VERIFICATION

I, Ray Goss, President of New England Central Railroad, Inc., verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on June 17 2014.


Ray Goss

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served on the following by U.S. first class mail, postage pre-paid on:

Pan Am Southern, LLC
1700 Iron Horse Park
North Billerica, MA 01862-1681

Robert B. Culliford
Pan Am Railways, Inc.
Boston & Maine Corporation
Springfield Terminal Railway Company
1700 Iron Horse Park
North Billerica, MA 01862-1681

James A. Hixon
William A. Galanko
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510


Eric M. Hocky

Dated: June 17, 2014

EXHIBIT A

APPENDIX: APPENDIX

TERMS AND CONDITIONS OF TRackage RIGHTS IMPOSED BY THE INTERSTATE COMMERCE COMMISSION GOVERNING THE USE BY BOSTON AND MAINE CORPORATION OF CERTAIN LINES OF CENTRAL VERMONT RAILWAY, INC.

0. DEFINITIONS

As used herein, the following capitalized terms have the following meanings (any other capitalized terms being defined in context hereafter):

0.1 "Agreement" means the terms and conditions of trackage rights as a whole set forth herein, as though the instant terms and conditions had been agreed to contractually by B&M and CV.

0.2 "Amtrak" means the National Railroad Passenger Corporation.

0.3 "B&M" means Boston and Maine Corporation, a corporation with its principal [*46] office at Iron Horse Park, North Billerica, Massachusetts 01862.

0.4 "CCR" means Claremont and Concord Railway (including its successors and assigns).

0.5 "Conveyance Date" means September 9, 1988, the date on which B&M conveyed the Former B&M Line to Amtrak, and on which Amtrak conveyed the same to CV, pursuant to the Order.

0.6 "CV" means Central Vermont Railway, Inc., a corporation with its principal office at 2 Federal Street, St. Albans, Vermont 05478.

0.7 "CV Lines" means the approximately 13.4-mile rail line between White River Junction, Vermont, and Windsor, Vermont, and the approximately 10.6-mile rail line between Brattleboro, Vermont, and East Northfield, Massachusetts, both of which have belonged to CV since before the Conveyance Date.

0.8 "Former B&M Line" means the approximately 48.8-mile rail line between Windsor, Vermont, and Brattleboro, Vermont, conveyed by B&M to Amtrak, and by Amtrak to CV, on the Conveyance Date pursuant to the Order.

0.9 "GMRC" means the Green Mountain Railroad Corporation (including its successors and assigns).

0.10 "ICC" means the U.S. Interstate Commerce Commission.

0.11 "Line" means the CV Lines and the Former B&M Line together. [*47]

0.12 "Order" means the decision of the ICC in National Railroad Passenger Corporation -- Conveyance of Boston and Maine Corporation Interests in Connecticut River Line in Vermont and New Hampshire, dated August 4, 1988, served August 9, 1988, and published at pages 761 through 817 of volume 4 of the ICC Reports, Second Series.

0.13 "ST" means the Springfield Terminal Railway Company (including its successors and assigns).

1. GRANT OF TRackage RIGHTS

1.1 Subject to the terms and conditions of this Agreement, B&M shall have the non-exclusive right to operate B&M's trains, locomotives, cars and equipment with B&M's own crews over the Line, as more particularly defined as follows:

All main line track and passing sidings between a point at the interlocking at East Northfield, Massachusetts (approximately B&M MP 49.67 and CV MP 110.51) to the Bank switch at the termination of B&M ownership at White River Junction, Vermont (approximately CV MP 13.40).

1.2 B&M shall have only overhead running rights over the CV Lines.

1.3 B&M shall have the exclusive right to serve all existing shippers and shippers' facilities that were located on the Former B&M Line as of the Conveyance Date, including [*48] any and all new shippers that locate at such existing facilities after the Conveyance Date, provided that B&M makes available a minimum three day per week service along the Line. B&M must consult with the shippers and ensure their needs are met up to three day per week service.

1.3.1 For purposes of this Section 1.3, "existing shippers and shippers' facilities" shall mean industries and facilities at rail sidings which received or tendered rail shipments during the twelve months immediately prior to the Conveyance Date.

1.3.2 For purposes of this Section 1.3, "three day per week service" shall mean the provision of local set-off and pick-up service to shippers on the Former B&M Line at least three times per week (Monday through the following Sunday) in each direction.

1.3.3 CV shall be permitted to commence service to existing shippers and shippers' facilities upon B&M's failure to make available three day per week service during two weeks out of any four week period, unless such failure is excused by Section 9.6.

1.4 Except as provided in Section 1.3, CV and B&M shall each have the right to compete for and serve the following shippers and shippers' facilities on the Former B&M [*49] Line:

(a) shippers and shippers' facilities located on the Former B&M Line which have not received or tendered rail shipments during the twelve months immediately prior to the Conveyance Date;

(b) any other new shippers;

(c) any existing shippers and shippers' facilities to which B&M does not provide a minimum three day per week service, as specified in Section 1.3.

1.4.1 CV shall, upon request by B&M, provide reciprocal switching to permit B&M to serve such shippers and shippers' facilities as B&M may serve hereunder. CV shall not be required to switch cars on B&M's behalf at shippers' facilities which CV serves by virtue of B&M's failure to make available a minimum three day per week service along the Line as specified by Section 1.3, but B&M shall retain the right to provide service directly to such shippers and shippers' facilities. B&M shall pay to CV a per switch charge not greater than 180% of the CV variable cost of providing such switching service computed using CV's costs computed in accordance with formulas generally used or accepted in ICC proceedings.

1.5 CV and B&M shall each have the right to compete for and to interchange traffic at Bellows Falls, Vermont, with [*50] GMRC and at Claremont Junction, New Hampshire, with the CCR. B&M shall have the exclusive right to interchange traffic at Charlestown, New Hampshire, with the ST.

1.6 B&M shall have the right of entry over the Line for any and all B&M employees, agents or representatives, machinery, vehicles or equipment which B&M may deem necessary or convenient for the purposes of inspecting the Line, clearing any derailments or wrecks of B&M trains on the Line or otherwise conducting its operations over the Line.

1.7 B&M shall without charge to CV dispatch the interlocking CPR 50 located at East Northfield, Massachusetts, until seven (7) days after CV notifies B&M that CV is prepared to assume such responsibility and all applicable regulatory requirements have been satisfied.

1.8 Except as provided herein, this Agreement does not diminish in any way CV's right to use the Line, or CV's right to lease or otherwise allow another carrier to use the Line.

2. TERM AND TERMINATION

2.1 The term of this Agreement shall commence as of 7:00 a.m. Eastern Time, on the Conveyance Date.

2.2 Except as provided in Section 2.3, and subject to the provisions of this section, the term of this Agreement shall [*51] be perpetual. After 20 years from the Conveyance Date, either party to this agreement may seek modifications from the other and, if satisfactory modifications are not agreed to after a reasonable period for negotiation, may apply to the ICC for modifications. Nothing in this section shall authorize the ICC to impose arbitration requirements upon either party to this Agreement.

2.3 B&M may terminate this Agreement immediately upon notice to CV.

2.4 Notwithstanding the foregoing, the parties hereby acknowledge and agree that B&M has appealed the Order, and that in the event the Former B&M Line is reconveyed to B&M in connection with or resulting from such appeal, this Agreement shall terminate upon such reconveyance, and that thereafter the terms and conditions of the April 1, 1985 and January 1, 1930 Trackage Rights Agreements shall govern their operations over and use of the Line, and such agreements shall be deemed re-executed in their current forms.

3. COMPENSATION

3.1 B&M shall have no obligation to pay for or contribute in any way towards the cost of upgrading of the Former B&M Line, except as provided in Section 3.7.

3.2 Except as provided in Section 1.7, CV shall [*52] be solely responsible for dispatching all operations over the Line and for the maintenance and repair of the Line, including the signals and the signal and dispatching system which controls operations on it. CV shall keep the Line, at all times throughout the term of this Agreement or any extensions thereof, in not less than FRA Class II condition.

3.3 In full satisfaction of any and all obligations of B&M to pay for the trackage rights provided herein or contribute towards the costs of dispatching, maintenance and repair of the Line (including the maintenance, repair and operation of the signals and the signal and dispatching system which controls operations on it), B&M shall pay to CV 20.1¢ per car mile (whether loaded or empty including locomotives, cabooses and work equipment) of traffic actually operated by B&M (or its assignee) over the Line. Notwithstanding the foregoing, the sum of such payments in respect of the Former B&M Line shall not exceed one hundred forty-two thousand dollars (\$ 142,000) per year during the first three years this Agreement is in force and shall not exceed seventy-five thousand dollars (\$ 75,000) in any year thereafter, provided, however, that the [*53] foregoing limitation shall not apply if the annual gross traffic volume on the Former B&M Line attributable to B&M's overhead or local service, including traffic for interchange to GMRC, CCR, or ST, exceeds 32,500 carloads. Locomotives, cabooses and work equipment shall not be included in determining whether traffic attributable to B&M has exceeded 32,500 carloads in a given year. In any year that the amount of traffic attributable to B&M on the Former B&M Line exceeds 32,500 carloads, B&M shall pay CV as additional compensation 20.1¢ per car mile for all the cars in excess of 32,500 cars, whether loaded or empty, including locomotives, cabooses and work equipment.

3.4 All payments to be made by B&M and CV under this Agreement (including the caps set forth in Section 3.3) shall be adjusted effective March 31, 1989, and semi-annually thereafter, for price level changes from July 1, 1988, (using

(Illegible Word) 1988) based on the relationship of the most recent quarter's Association of American Railroads (AAR) Eastern District, Quarterly Indices of Chargeout Prices and Wage Rates (Table C) - "Material prices, wage rates and supplements combined (excluding fuel)" to comparable indices [*54] of the quarter six months previous. The first adjustment to be made shall be based on the comparison of the Fourth Quarter 1988 index value to the Second Quarter 1988.

3.5 B&M shall have responsibility for and shall report and pay directly to the owner of the cars, all mileage, car hire and other charges accruing on cars in B&M's trains on the Line.

3.6 CV shall issue its bill to B&M for the payments specified by Sections 1.4 and 3.3 by the fifteenth (15) day of each month for the traffic transported during the preceding calendar month. B&M shall pay to CV the amount shown on such bill by the last day of the month in which such bill is issued: B&M shall not be required to pay mileage charges attributable to its operations over the Former B&M Line once payments made in the preceding months of that year with respect to those operations equal the payment cap as adjusted in accordance with Section 3.4 for that year, until traffic attributable to B&M's operations over the Former B&M Line exceeds 32,500 carloads for that year. Payments not received by CV by such last day of the month in which the bill is issued will accrue interest at the rate of one and one-half (1.5%) percent per [*55] month for each month or portion of a month by which the payment is late.

3.7 In the event that CV is required to undertake any major capital projects which may become necessary due to changes in applicable local, state or federal statutes, ordinances or regulations, or by catastrophic occurrences on the Line, including but not limited to floods or destruction of bridges, B&M or its assignee shall pay its proportionate share of the expenditures actually made by CV for such capital projects based upon the percentage of total car miles on the Line attributable to B&M's (or its assignee's) average traffic volume during the preceding five (5) year period.

4. ADDITIONS AND ALTERATIONS

4.1 CV shall pay for and be responsible for the construction, maintenance, repair and renewal of any additional connections to the Line which it may require.

4.2 If B&M determines that changes in or additions and betterments to the Line, including changes in communication, dispatching or signal facilities as they existed immediately prior to the Conveyance Date, are required to accommodate B&M's operations beyond that required by CV to accommodate CV's and Amtrak's operations over the Line, B&M shall [*56] pay for the construction of such additional or altered facilities, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities. Notwithstanding the foregoing, CV shall have the right to approve of any such addition or alteration prior to its construction, which approval shall not be unreasonably

withheld, and such addition or alteration shall be constructed in such a manner as to minimize interference with CV's or Amtrak's operations over the Line.

5. SCHEDULING OF TRAINS AND MAINTENANCE; OPERATING RULES

5.1 The trains, locomotives, cars and equipment of B&M, CV, Amtrak, and any other present or future user of the Line or any portion thereof, shall be operated without prejudice or partiality to any party to this Agreement or any such other user and in such a manner as will result in the most economical and efficient manner of movement of all traffic; provided, however, that CV shall give priority to intercity rail passenger trains of Amtrak to the extent required by Section 402 of the Rail Passenger Service Act. Notwithstanding the foregoing, B&M shall have the right, in consultation with CV, to establish the schedules of B&M's trains [*57] over the line. Trains performing local work, whether B&M, CV or otherwise, are not entitled to priority over trains that are not performing such work. CV shall establish CV's train schedules with due regard to the trains to be operated by B&M. Each party shall use reasonable efforts to provide five (5) days' notice of changes in its traffic and operating patterns and procedures which may affect the Line. B&M acknowledges that the upgrading work will require a twelve (12) hour work block scheduled for between 7:00 a.m. and 7:00 p.m. CV shall coordinate with B&M and use its best efforts in scheduling the work required for the upgrading of the Former B&M Line and any future maintenance or repair of the Line to minimize any interference with or disruption of B&M's operations over the Line.

5.2 Any and all training that may be required to qualify B&M operating personnel as to CV's operating rules (after the initial training of such personnel, which will be provided by CV) shall be performed by B&M, and the determination as to whether such operating personnel are qualified under CV's operating rules shall be made in the discretion of B&M (giving consideration to any comments or recommendations [*58] of CV). CV shall train, and periodically recertify in accordance with CV's operating rules, B&M operating personnel who act as instructors for B&M personnel regarding CV's operating rules.

5.3 CV operating rules shall govern all operations over the Line, and CV shall report to B&M any incidents of violation of such rules by a B&M employee. CV may at its option, for good cause shown, exclude such employee from the Line.

5.4 In the event that any dispute arises as to the interpretation of any operating rules, the interpretations of the Uniform Code of Operating Rules, as amended, shall govern.

6. CLEARING OF DERAILMENTS AND WRECKS

6.1 In the event of any derailment or wreck of a B&M train, B&M shall clear the Line to allow for the passage of other trains within a reasonable time. B&M shall perform any rerailing wrecking or wrecking train service as may be required in connection with such derailment or wreck, in accordance with its customary practices. Except as provided in Section 7, the cost liability, and expense of the foregoing, including, without limitation, loss of, damage to, or destruction of any property whatsoever and injury to or death of any person or persons whomsoever [*59] resulting therefrom, shall be the responsibility of B&M. In the event that B&M does not begin rerailing operations for passage of trains over the Line within twelve (12) hours of an occurrence or does not complete the process of clearing the Line within a reasonable time, CV may clear the Line for passage of trains, and B&M shall reimburse CV for all reasonable costs CV incurs in performing such service.

7. RELEASE AND INDEMNIFICATION

7.1 Save as herein otherwise provided, each party hereto shall be responsible for and shall assume all loss, damage or injury (including injury resulting in death) to persons or property, including the cost of removing any trackage, repairing trackage and correcting environmental damage, which may be caused by its engines, cars, trains or other on-track equipment (including damage by fire originating therefrom) whether or not the condition or arrangement of the trackage contributes in any manner or to any extent to such loss, damage or injury, and whether or not a third party may have caused or contributed to such loss, damage or injury, and for all loss or damage to its engines, cars, trains or other on-track equipment while on said trackage from [*60] any cause whatsoever, except in the case of collision, in which event the provisions of Section 7.2 shall apply.

7.2 In the event of a collision between CV's and B&M's engines, cars, trains or other on-track equipment while on the Line, the apportionment of liability between the parties hereto for all loss, damage or injury (including injury resulting in death) to any person (including CV's or B&M's employees, agents or representatives) or property shall be governed by the following provision:

7.2.1 If the employees of one party are solely at fault, that party shall be responsible for all such loss, damage or injury including the cost of removing wreckage, repairing trackage, and correcting environmental damage.

7.2.2 If the employees of both parties hereto are at fault, or if the cause of the accident is so concealed that it cannot be determined whose employees are at fault, each party shall bear and pay for all such loss, damage or injury which its own engines, cars, trains or other on-track equipment and their contents or property in its custody, or its employees or others claiming for them, may have suffered by reason or in consequence of the accident. Responsibility for [*61] all other such loss, damage or injury shall be apportioned equally between the parties hereto.

7.2.3 The words "all other such loss, damage or injury" referred to in this Section 7.2 shall be deemed to include but not be limited to the cost of removing wreckage, repairing trackage, correcting environmental damage, and third party claims.

7.2.4 As between the parties hereto, the foregoing provisions of this Section 7.2 shall be applicable whether or not a third party may have caused or contributed to the accident.

7.2.5 The words "trackage" referred to in this Section 7 shall be deemed to include but not be limited to the tracks, structures or facilities pertaining to operation of the Line.

7.3 Without in any way restricting the terms of this Section 7, in the case of a collision or accident between the train of either party to this Agreement and the property of a third person or other entity, including any action done in the process of trying to avoid an accident or a collision, such party shall save harmless and indemnify the other party forthwith for all damages suffered by the other party including damages to equipment and structures or injuries (including death) to the employees [*62] or agents of the other party including also the results of those actions done in the process of avoiding a collision or accident, and irrespective of negligence of either party or such third person or other entity, and with a right of subrogation in favor of such party against any such third person or other entity.

7.4 Each party hereto shall forever indemnify and save harmless the other party, from and against all claims, liability or judgments by reason or on account of any injury to or death of any person or of any loss or damage to property, the liability for which is herein assumed by such first mentioned party, and such first mentioned party shall pay and discharge any judgment that may be obtained by reason thereof, and all costs, charges and expenses payable thereunder, including legal counsel fees.

7.5 The parties shall settle, as between themselves, any claim for loss or damage according to the terms of this Agreement, notwithstanding any judgment or decree of any court or other tribunal in a proceeding brought by other parties. In case a suit or proceeding shall be commenced by any person or corporation against either party hereto for or on account of any loss, damage [*63] or injury for which the other party hereto is liable under the provisions of this Agreement, the party so sued or proceeded against shall give to the other party reasonable notice, in writing, of the pendency of such suit or proceeding and thereupon the other party shall assume the defense of such suit or proceeding or shall save and hold the party so sued harmless from all loss and costs by reason thereof. Neither party hereto shall be bound by any judgment against the other party unless it shall have reasonable notice that it is so required to defend and has reasonable opportunity to make such defense. When such notice and opportunity has been given, the party notified shall be bound by the judgment as to all matters that could have been litigated in such suit or proceeding.

7.6 In every case of death or injury suffered by an employee of either B&M or CV, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay such compensation, if such compensation is required to be paid in [*64] installments over a period of time, such party shall not be released from paying such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

8. DEFAULT; PAYMENT DELINQUENCY

8.1 In the event of a material breach by B&M of the terms and conditions of this Agreement which continues for a period of forty-five (45) days after notice thereof from CV, CV shall have the right to terminate this Agreement upon ninety (90) days' notice.

8.2 If B&M becomes delinquent in payment of any amount by more than fourteen (14) days under the terms of Section 3.6, CV shall be entitled to receive advance payment from B&M for each B&M train seeking access to the Line until B&M satisfies the delinquency in full. If B&M fails to tender the advance payment, CV shall be further entitled to

exclude and eject B&M from the Line until B&M tenders the advance payment. CV shall be entitled to these remedies for delinquencies even if B&M has disputed the billed amount by invoking arbitration or otherwise. During the pendency of any such exclusion or ejection, CV shall nevertheless accept [*65] B&M cars for interchange at any point on the Line.

9. GENERAL PROVISIONS

9.1 No Waiver. Waiver of any provision of this Agreement, in whole or in part, in any one instance shall not constitute a waiver of any other provision in the same instance, nor any waiver of the same provision in another instance, but each provision shall continue in full force and effect with respect to any other then existing or subsequent breach.

9.2 Notice. Any notice required or permitted under this Agreement shall be given in writing to the parties at their respective addresses specified above, or at such other address for a party as that party may specify by notice as provided herein, by (i)(A) delivery in hand or by postage prepaid, United States first class mail and (B) registered or certified mail, return receipt requested, or (ii)(A) telefax and (B) registered or certified mail, return receipt requested, or (iii)(A) Federal Express or other form of expedited mail that provides for delivery to the sender of a signed receipt, or (iv) telegram. Notice so sent shall be effective upon receipt.

9.3 Integration. Except for the Order and the documents executed in pursuance thereof, this Agreement constitutes [*66] the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written communications, proposals, negotiations, representations, understandings, courses of dealing, agreements, contracts and the like between the parties in such respect. Except for any and all obligations incurred or causes of action accrued thereunder prior to or as of the Conveyance Date, and except as provided in Section 2.4 and 9.3.1 hereof, the Trackage Rights Agreements by and between B&M and CV dated as of April 1, 1985, and January 1, 1930, are hereby terminated. Any provisions of any other agreement(s) between CV and B&M which are not inconsistent with the provisions of this Agreement shall remain in effect until cancelled according to the terms of such other agreement(s).

9.3.1 The provisions of Section 8, Freight Haulage, of the January 1, 1930 Trackage Rights Agreement between CV and B&M, as amended from time to time, shall remain in effect until cancelled by either party upon ninety (90) days' prior written notice to the other.

9.4 Miscellaneous. This Agreement: (i) may be amended, modified, or terminated, and any right under this Agreement may be waived in whole [*67] or in part, only by a writing signed by both parties; (ii) contains headings only for convenience, which headings do not form part of and shall not be used in construction of this Agreement; and (iii) is not intended to inure to the benefit of any party not a party to this Agreement.

9.5 Availability of Equitable Relief. The obligations imposed by this Agreement are unique. Breach of any of such obligations would injure the parties to this Agreement; such injury is likely to be difficult to measure; and monetary damages, even if ascertainable, are likely to be inadequate compensation for such injury. Protection of the respective interests provided herein would require equitable relief, including specific performance and injunctive relief, in addition to any other remedy or remedies that the parties may have at law or under this Agreement.

9.6 Force Majeure. No party to this Agreement shall be responsible for delays or errors in its performance or other breach under this Agreement occurring by reason of circumstances beyond its control, including acts of civil or military authority, national emergencies, fire, major mechanical breakdown, labor disputes, flood or catastrophe, acts [*68] of God, insurrection, war, riots, delays in suppliers, derailments or failure of transportation, communication or power supply.

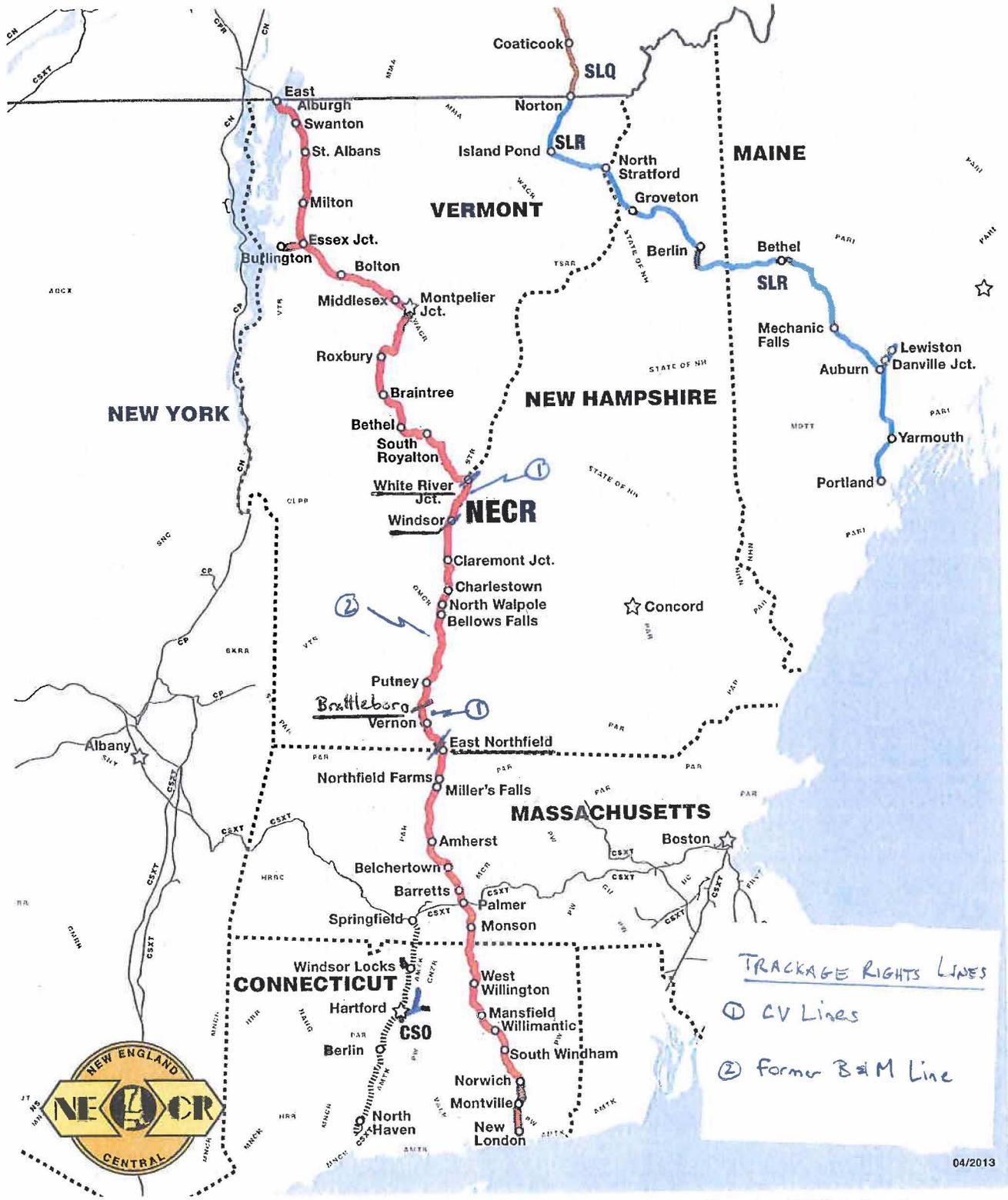
9.7 Trains, Locomotives, Cars or Equipment. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such trains, locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of, or under the control of the other party to this Agreement, such trains, locomotives, cars and equipment shall be considered those of the other party, except where the cars or equipment are being transported under the Haulage Agreement referred to in Section 9.3.1 of this Agreement.

9.8 Assignment. This Agreement shall bind and inure to the benefit of the parties and their respective legal representatives, successors and assigns. B&M shall have the right to assign any or all of [*69] B&M's rights and obligations under this Agreement to any affiliate of B&M, following consultation with CV. B&M shall have the right to assign any or all of B&M's rights and obligations under this Agreement to any other person with CV's prior consent, which shall

not be withheld unreasonably. In the event of an Agreement, the number of carloads attributable to the assignee's operations over the Former B&M Line shall be included in the number of cars attributable to B&M's operations for the purposes of Section 3.3 of this Agreement.

9.9 Governing Law. This Agreement is imposed and entered into in, and shall be governed by the laws of, the District of Columbia.

EXHIBIT B



New England Central Railroad, Inc.
 2 Federal St. Suite 201
 St. Albans, Vermont 05478
 802-527-3500

- Genesee & Wyoming (G&W) Railroads**
- CSO Connecticut Southern Railroad, Inc.
 - NECR New England Central Railroad, Inc.
 - SLR St. Lawrence & Atlantic Railroad Company
 - SLQ St. Lawrence & Atlantic Railroad (Québec) Inc.