

**BEFORE THE
SURFACE TRANSPORTATION
BOARD**

DOCKET NO. 35842

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

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Dated: July 15, 2014

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Green Mountain Railroad Corporation**

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The Washington County Railroad Company (“WACR”) and the Green Mountain Railroad Corporation (“GMRC”) (collectively “VRS”) hereby submit this memorandum in support of the June 27, 2014 dated Pan Am Southern LLC (“PAS”) "Motion to Show Cause" in the above captioned proceeding. Specifically, VRS supports PAS’ request that the Board order the New England Central Railroad, Inc. (“NECR”) to show cause why its speed restriction on foreign railroads and its requirement that PAS produce revenue waybill information prior to movement on NECR lines (the "Operating Restrictions") are reasonable and do not violate the Trackage Rights Order issued by the Interstate Commerce Commission in *Amtrak- Conveyance of Boston and Maine Corporation Interests in Connecticut River Line in Vermont and New Hampshire*, Finance Docket No. 31250, 6 I.C.C.2d 539 (1990) ("TRO").

VRS supports and echoes PAS in its assertion that the sole purpose of the PAS Motion is to address the unilateral Operating Restrictions imposed by NECR since May 2014 in violation of the very TRO that NECR seeks to enforce. The Operating Restrictions have significantly impacted service to VRS customers and will to continue to do so. Therefore VRS joins PAS’ request that the Board expedite consideration of this motion in advance of any procedural schedule requested by NECR in its filing.

I. FACTUAL BACKGROUND

PAS uses its trackage rights pursuant to the TRO to compete with NECR for the business of shippers on the Former B&M Line, which is exactly the type of competitive outcome that the ICC preserved in the TRO as pointed out by PAS in footnote 3 of its motion. VRS interchanges with PAS at Bellows Falls and White River Junction Vermont. PAS has informed VRS that the NECR sought modifications to the TRO and met with PAS in late 2013 and early 2014 to discuss issues such as compensation, insurance requirements, and other items. PAS also reported that the discussions did not result in an agreement. In violation of the spirit and letter of the TRO rather than appeal to the Board, NECR instead elected to engage in "self-help" by imposing the Operating Restrictions on PAS that have directly impacted the VRS. VRS agrees with PAS' assertion that the NECR Operating Restrictions amount to a unilateral modification of the TRO without STB authority that directly impacts the ability of PAS and VRS to serve their customers.

II. ISSUES AND CONTROVERIES

A. The Speed Restriction on Foreign Roads

Effective May 21, 2014 NECR imposed a speed restriction on "[a]ll foreign freight trains operating on the [NECR]..." that limited operating speeds to 25 miles per hour. The NECR did not, however, apply the speed restriction to its own trains. It applied the restrictions to trains operated by PAS. Ironically the NECR rail line in question was recently rehabilitated with millions of dollars of public funds. Prior to the announced restriction on speed, the speed limit on the Rail Lines was 40 m.p.h. VRS agrees with PAS' assertion that there is no other reason for the imposition of this speed restriction other than to disadvantage service provided on the line by foreign railroads. As a result of

this unilateral imposition of this speed restriction has adversely affected the ability of VRS and PAS to serve their customers and provide competitive options to others. This restriction on speed has added at least one hour to transport time over the length of the Rail Lines. This speed restriction is in direct contrast to the letter and spirit of the TRO that mandates that PAS and NECR trains be operated "without prejudice or partiality" and thereby constitutes a violation of the Board's order.

B. The Waybill Requirement

As pointed out by PAS the NECR also imposed a requirement that PAS provide revenue waybills on all cars moving over the Rail Lines. This is a requirement that did not previously exist and it also is not authorized by the TRO. VRS agrees with PAS' conclusion that this strong arming by NECR is in direct violation of the disclosure laws established by Congress decades ago. *See Generally 49 U.S.C. 11904.* NECR has no lawful right to demand this information that belongs to VRS or any other carrier, nor does PAS have any authority under the law to disclose it.

Despite VRS and PAS objections NECR continues to deny permission for PAS trains to operate to and from Bellows Falls, VT, and White River Junction, VT, without the production of waybills, which has adversely affected movement of cars for VRS customers. As a direct consequence PAS now has to expend additional resources attempting to provide rail service only to be denied entry to the Rail Lines by NECR and VRS is now forced to deal with lengthy delays in the delivery of its customer's freight and the associated costs of rerouting traffic and or utilizing intermodal means to serve its customers.

The NECR revenue waybill mandate violates the TRO's requirement that "[t]he trains, locomotives, cars and equipment of B&M, CV, Amtrak and any other present or future

user of the Line shall be operated without prejudice or partiality to any party to this Agreement or any other user and in such manner that will result in the most economical and efficient manner of movement of all traffic. Indeed, the arbitrary waybill requirement is the antithesis of efficient movement.

III. NEGATIVE IMPACT ON VRS CUSTOMERS

GMRC has recently developed a large intermodal terminal in Bellows Falls, Vermont. GMRC delivers loaded cars to this facility that are received from Pan Am at GMRC's interchange point with PAS at Bellows Falls, VT. These cars are handled by PAS from Deerfield, MA to Bellows Falls, VT in PAS linehaul service, in PAS trains, operating under trackage rights over the NECR line from Brattleboro, VT to Bellows Falls. Since September of 2013 and prior to a the NECR bulletin, PAS was operating at speeds of 40 mph and GMRC customers had no issues receiving service or cars at the Bellows Falls facility. The new NECR bulletin seeks to limit all foreign trains on NECR tracks to 25 mph as distinguished to its own trains that will continue to operate at 40 mph as well as impose the anti-competitive and unlawful requirement of disclosing to a third party VRS waybills. This restriction has negatively affected PAS and consequently VRS customers that are routed through PAS. NECR's restriction is arbitrary, capricious and predatory in nature. This is supported by the fact that some customers have changed their carrier from NECR to PAS. NECR has offered no rational basis for this restriction which unduly prejudices PAS and VRS. This new restriction specifically targets and affects PAS and VRS customers as well as the consumers they serve who also will ultimately be negatively affected.

PAS and VRS have already seen disruption of service as a result of this new restriction and our customers are projecting that the real brunt of this restriction will be felt in the winter when traffic picks up by limiting crew hours with slower trains and negatively affecting

transportation efficiency. The transportation delay of certain commodities is a very serious issue given the shortages that these industries experienced in our region this past winter. NECR waybills requirements and its new speed restrictions on just foreign carriers will further limit rail transportation of important commodities at a time when the industry and end consumers need them the most.

One such VRS customer has two facilities, one at Claremont and the other at Bellows Falls which together totals enough product being shipped annually to the Northeast market to represent approximately 40% of the entire Vermont and New Hampshire market for that commodity. Given the size of the market that this VRS customer is serving it has become quite clear that an NECR imposed and arbitrary speed restriction and waybill requirement will add an unnecessary bottleneck in railway logistics that are proving to be devastating to VRS customers' businesses and the customers they serve.

IV. REQUESTED RELIEF

VRS hereby requests that the Board grant PAS' Motion and issue an order as soon as possible that NECR show cause as to why its speed limit restriction on foreign railroads and its revenue waybill requirement are reasonable and do not violate the TRO. VRS also supports PAS's alternative request that the Board find NECR's operating restrictions invalid and unenforceable and grant such other and further relief as the Board may deem under the circumstances. Due to the immediate impact on both VRS and PAS of the NECR's arbitrary operating restrictions, VRS supports PAS' request that the Board hold NECR's request to set terms of the relevant trackage right order in abeyance until these issues are resolved.

Respectfully submitted,



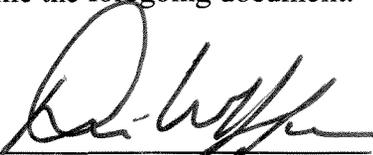
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VERIFICATION

I, David W. Wulfson, President of both Green Mountain Railroad Corporation and Washington County Railroad Company, 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: July 15, 2014



David W. Wulfson

CERTIFICATE OF SERVICE

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

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Dated: July 16, 2014



Eric R. Benson, Esq.