

BEFORE THE
SURFACE TRANSPORTATION BOARD

236331

DOCKET NO. FD 35842

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

ENTERED
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July 17, 2014
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REPLY OF NEW ENGLAND CENTRAL RAILROAD, INC.

TO MOTION OF PAN AM SOUTHERN LLC TO SHOW CAUSE

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Dated: July 17, 2014

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**REPLY OF NEW ENGLAND CENTRAL RAILROAD, INC.
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This Reply is filed by New England Central Railroad, Inc. (“NECR”) in response to the “Motion to Show Cause” (quotation marks in the original) filed by Pan Am Southern LLC (“PAS”) in this proceeding on June 27, 2014. The Motion should be dismissed by the Board because (1) the Board’s regulations do not provide for such a procedure, and (2) the matters raised by PAS are not germane to the NECR Request to Set Trackage Rights Terms and Conditions (the “Request”) that instituted this proceeding.¹

Discussion

- 1. The Board’s regulations do not provide for a “motion to show cause” or indicate what procedures might apply.**

PAS refers to its pleading as a “Motion to Show Cause.” By placing the term in quotation marks, PAS tacitly acknowledges that there is no such procedure provided for in the Board’s regulations. A review of the PAS Motion makes it clear that PAS is simply requesting that the Board interpret certain provisions of the TO. As PAS is well aware, questions of this

¹ NECR is not herein responding to the substance of the allegations by PAS that NECR has violated the current terms of the Trackage Rights Order (“TO”) issued by the Interstate Commerce Commission (“ICC”) in *Amtrak – Conveyance of B&M in Conn River Line in VT & NH*, ICC Finance Docket No. 31250, 6 ICC 2d 539 (1990) (“*Amtrak II*”). NECR denies the allegations, and will respond if the Board were to issue an order to show cause, or in response to a properly instituted proceeding.

nature are generally addressed with the Board through a separate declaratory order proceeding. *See Boston and Maine Corporation and Springfield Terminal Railway Company v. New England Central Railroad, Inc.*, STB Finance Docket No. 4612 (complaint and petition filed November 9, 2004) (predecessors of PAS sought Board interpretation of certain liability provisions of the TO); *Rymes Heating Oils, Inc. – Petition for Declaratory Order*, STB Finance Docket No. 34098 (petition filed November 13, 2001) (shipper sought Board interpretation of the service provisions of the TO with respect to a newly constructed sidetrack). A separate proceeding in accordance with established Board regulations, would require PAS to fully set forth its claims and allow for the development of a full record on which the Board could make a reasoned decision.

2. The relief requested by PAS is not within the scope of, or germane to, the relief requested by NECR in this proceeding.

The relief requested by PAS in its Motion is clearly not within the scope of the relief sought by NECR in this proceeding. NECR seeks, in accordance with the rights granted by the Interstate Commerce Commission (“ICC”) in imposing the original TO, to have the Board establish new terms and conditions for future operations by PAS under its trackage rights over the Line.² NECR’s Request does not seek, as claimed by PAS, to enforce the operating provisions of the existing TO. (NECR only seeks to exercise the reopening rights set forth in Section 2.2.) On the other hand, the PAS Motion seeks interpretation of the provisions of the current TO and how they apply to PAS’s current operations. The relief sought by the respective parties is clearly separate and distinct, and there is no reason for the Board to consider the relief requested by PAS in the course of this proceeding. PAS’s goal in filing its Motion in response to the NECR Request is clearly to delay the implementation of the procedural schedule requested

² Capitalized terms have the meanings set forth in the TO unless otherwise defined herein.

by NECR in its Request (*see* PAS Motion at 1, 6).³ The relief sought in the NECR Request is not dependent on, and is unrelated to any relief the Board might grant in response to the relief requested in the Motion.

Conclusion

For the foregoing reasons, NECR requests that the Board dismiss the “Motion to Show Cause.”

Respectfully submitted,



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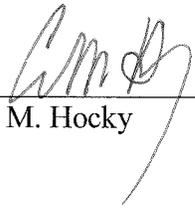
³ Given that PAS has not responded to the Request, NECR is by separate letter asking the Board to issue a procedural order in connection with the establishment of new terms and conditions.

CERTIFICATE OF SERVICE

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

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