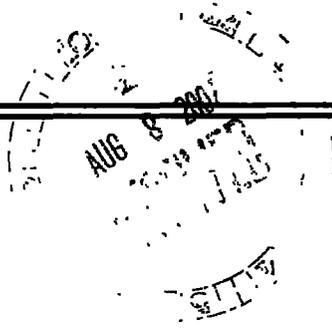




PAN AM RAILWAYS

IRON HORSE PARK
NO BILLERICA, MA 01862



VIA FEDERAL EXPRESS, OVERNIGHT MAIL

219976

August 7, 2007

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
295 E. Street, SW
Washington, DC 20423

AR 32-Sub 100

RE: Boston and Maine Corporation, Inc – Petition for Waiver

Dear Secretary Williams:

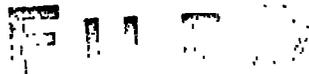
Enclosed for filing in the above-captioned proceeding, please find an original and ten (10) copies of the Petition for Waiver dated August 7, 2007 filed on behalf of Boston and Maine Corporation and Springfield Terminal Railway Company. Additionally, please find a check in the amount of \$ 1,500.00 representing the appropriate filing fee.

Should you have any questions in regard to this filing, please contact the undersigned at (603) 766-2006. Thank you for your assistance in this matter.

Very Truly Yours,

Patricia A. Morris
Counsel for Boston and Maine Corporation
(603) 766-2006

Enclosures



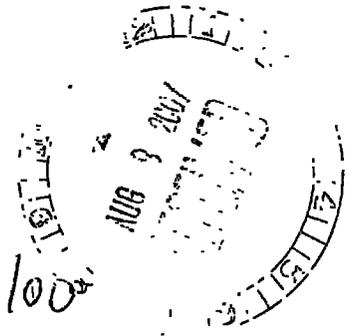
2007

SEP 10 2007

Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD

Docket No. AB 32-Sub 100



**BOSTON AND MAINE CORPORATION & SPRINGFIELD TERMINAL
RAILWAY COMPANY- ADVERSE DISCONTINUANCE OF OPERATING
AUTHORITY- NEW ENGLAND SOUTHERN
RAILROAD CO., INC. - FOR NH MAIN LINE 80.68 TO
56.0, 76.72 TO MILE POST 1.77, AND
ENG. STA. 1839+42 TO ENG.ST. 41.98**

FILED

PETITION FOR WAIVER

**BOSTON AND MAINE
CORPORATION
SPRINGFIELD TERMINAL
RAILWAY COMPANY
Patricia A. Morris
Corporate Counsel
14 Aviation Ave.
Portsmouth, N.H. 03801
(603) 766-2006
(603) 766-2094 (fax)**

Dated: August 7, 2007

ENT...
Office of the Secretary

Part of
Public Record

BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET No. _____ (formerly FD-30618-0)

**BOSTON AND MAINE CORPORATION & SPRINGFIELD TERMINAL
RAILWAY COMPANY- ADVERSE DISCONTINUANCE OF OPERATING
AUTHORITY- NEW ENGLAND SOUTHERN
RAILROAD CO., INC FOR NH MAIN LINE 80.68 TO
56.0, 76.72 TO MILE POST 1.77, AND
ENG. STA. 1839+42 TO ENG.ST. 41.98**

PETITION FOR WAIVER

A. Background Facts.

Pursuant to 49 C.F.R. § 1152.24(e)(5), the Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively “Pan Am”) seeks waiver of certain requirements of the Surface Transportation Board (“STB”) abandonment regulations for an adverse discontinuance application that Pan Am intends to file in this proceeding. Pan Am also seeks certain minor related exemptions as described below. These requirements are inapplicable or irrelevant in an adverse discontinuance context, and the STB has consistently granted waivers and exemptions from such provisions in previous adverse abandonment and discontinuance cases. Pan Am intends to seek an adverse discontinuance of operations by New England Southern Railroad Co. Inc, (“NES”). Pan Am intends to file its adverse discontinuance application on or about September 6, 2007.

Pan Am intends to ask the STB to find that the public convenience and necessity permit the adverse discontinuance of operations by NES over approximately 27 miles of track in Central

New Hampshire (the "Subject Line"). [The lease affected the following lines of railroad: (1) a portion of the New Hampshire main line from Manchester to Penacook; (2) a 1.17 miles segment of line extending from the switch with the New Hampshire main line at Concord toward Lincoln; (2) a .49 mile segment of the former Claremont and Concord Railroad line extending from the switch with the New Hampshire main line at milepost B73.71; and (4) on track for interchange purposed in the Pan Am yard at Manchester.]

NES has been operating the Subject Line pursuant to the Lease Agreement dated January 14, 1985 (the "Lease"). The Lease contained an initial ten-year term; after the term's expiration, either Party could terminate the lease upon 90 day written notice to the other (see Section VII of Lease, attached hereto as Exhibit A). On or about April 27th, 2007, Pan Am provided written notice of its intent to terminate the Lease. In this letter, Pan Am informed NES that Pan Am would assume operating the Subject Line under its own operational plan. Pan Am scheduled the Lease to terminate on or about August 1, 2007. Per a July 21, 2007 letter, NES has informed Pan Am that it will not file for discontinuance.

Pending the approval of its application and consummation of the discontinuance of service, Pan Am will control all rail operations along the Subject Line. This adverse discontinuance is necessary to remove NES's interest in the Subject Line from STB jurisdiction so that Pan Am can proceed to remove the interests of NES under state law. The only apparent objection to this discontinuance comes from NES.

Pan Am will unite the Subject Line with Pan Am's existing system configuration and integrate the Subject Line back into the closely controlled atmosphere of its regional railroad operations. Moreover, Pan Am will implement all of the safety and operational policies and procedures necessary to meet the demands of the service. As a result, Pan Am will create a more

efficient service for shippers along the Subject Line. However, the presence of NES on the Subject Line is an impediment to pursuing this objective. Although Pan Am has rightfully exercised its option to terminate the Lease, NES has refused to voluntarily discontinue its operations along the Subject Line.

B. Waiver Requests.

As the STB and its predecessor have consistently found, much of the information that the STB's regulations otherwise require in an abandonment or discontinuance application is largely inapplicable or irrelevant to the issues in an adverse discontinuance proceeding. Pan Am seeks waiver on the ground that the Subject Line at issue is contained entirely in N.H, consists of only 27 miles and approximately 8 customers, and service along the Subject Line would be conducted by the previous operator and current property owner, Pan Am. Thus, Pan Am is familiar with the Subject Line and its demands, and Pan Am has significant experience in rail line operations throughout New Hampshire. In addition, little of the information in the regulations sought to be waived is relevant to the merits of an adverse discontinuance application. Furthermore, as Pan Am has not operated the line for over 20 years, Pan Am is not in possession of much of the information required in the regulations sought to be waived. Waiver of these inapplicable and unneeded portions of the STB's abandonment regulations is routine in adverse abandonment or discontinuance cases. *Chelsea Property Owners – Abandonment Portion of Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY*, Docket No. AB-167 (Sub. No. 1094) (ICC served July 19, 1989); *Grand Trunk Western Railroad Incorporated-Adverse Discontinuance of Trackage Rights Application- A line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH*, Docket No. AB-31 (Sub. No. 30) (STB served

Feb. 12, 1998); *City of Rochelle, Illinois, -Adverse Discontinuance-Rochelle Railroad Company*, Docket No. AB-549 (STB served June 5, 1998).

Pan Am requests waiver of the following informational requirements of 49 CFR § 1152 Subpart C:

1. 49 C.F.R. § 1152.22(a)(5), 1152.10-1152.14 - System Diagram Map.

Pan Am seeks waiver of the system diagram map requirements of §1152 Subpart B. There is no need for filing of a system map in an application, which is designed to permit a change of operations, not discontinue service entirely. *City of Rochelle* at 3; see also *Grand Trunk Western Railroad Incorporated* at 2 (finding that the filing of a system diagram map is not appropriate in the context of adverse abandonment). The system map requirements are not relevant to adverse discontinuance proceedings. *Maine Central Railroad Company, State of New Hampshire – Adverse Discontinuance – Line Between Whitefield, NH and St. Johnsbury, VT.*, Docket No. AB-848-0 (STB served July 1, 2003) at 4.

2. 49 C.F.R. § 1152.22 (c), (d), and (e). – Service provided, Revenue and cost data, and Rural and community impact.

Because the adverse discontinuance arises in the context of continued service, “there is no point in requiring the submission of traffic data, data on revenues and costs, and information about transportation alternatives”. *Fore River Railroad Corporation – Discontinuance of Service Exemption – Norfolk County, Ma*, Docket No. AB-539 (ICC served Feb. 13, 1992) at 2, citing *Chelsea*. Moreover, revenue and cost data is “intended to apply to carriers seeking to discontinue their own operations on the grounds that those operations are a burden on interstate commerce”. *Canadian National Railway Company- Adverse Discontinuance – Lines of Bangor*

and Aroostock Railroad Company and Van Buren Bridge Company in Aroostook County, Me,
Docket No. AB-279-3 (STB served September 25, 2002) at 7.

3. 49 C.F.R § 1105 – Environmental and historical requirements.

Because this adverse discontinuance arises in the context of the continued rail operations and does not results in significant changes that exceed the thresholds established in Section 1105.7, this proceeding is exempt from the environmental and historic reporting requirements of § 1105 pursuant to 49 C.F.R. §§ 1105.6(c)(2) and 1105.8(b)(1). See *City of Rochelle* at 2; See also *The Kansas City Southern Railway Company – Adverse Discontinuance Application – A Line of Arkansas & Missouri Railroad Company*, Docket No. AB-103 (Sub. No. 14) (STB served Nov. 24, 1998) at 2, n.3. Pan Am also requests any further exemption or waiver that the STB may find necessary to confirm the inapplicability of environmental and historical reporting requirements to this proceeding.

4. 49 C.F.R. § 1152.20- Notice and Publication Requirements.

Pan Am requests waiver of all notice and publication requirements under Section 1152.20(a)(1),(2), (3) and (4) and 49 C.F.R. 1152.20(b)(1) except for the following:

(a) This Petition for Waiver would be served upon all the shippers on the line and all connecting rail carriers. This Petition for Waiver is request to serve as the notice of intent to discontinue service required under 49 C.F.R. 1152.20.

(b) A copy of the application would be served upon the aforementioned relevant parties and on the New Hampshire Department of Transportation. See *City of Peoria and Village of Peoria Heights, IL- Adverse Discontinuance – Pioneer Industrial Railway Company*, Docket No. AB-878-0, (STB served Sept. 10, 2004).

Pan Am requests exemption from the following requirements:

1. 49 U.S.C. § 10903(c)(2).- System Diagram Map.

Pan Am requests an exemption from the system diagram map requirements of 49 U.S.C. § 10903(c)(2), pursuant to 49 U.S.C. § 10502, to the extent deemed necessary for the adverse discontinuance application.

2. 49 U.S.C. 10903(a)(3)(B). Posting Requirements.

Because Pan Am is not in possession of the line, it cannot comply with the notice and publication requirements (and related regulations, 49 C.F.R. 1152.20(a)(3)) of this Section. Moreover, this provision is “designed for carriers, unlike [Pan Am], [who] are proposing to voluntarily discontinue their own service over a line”. See *Canadian National*.

3. 49 U.S.C. § 10904 – Financial Assistance Requirements.

Pan Am requests an exemption from the financial assistance requirements of 49 U.S.C. § 10904 (and waiver of related regulations, 49 C.F.R § 1152.27) See *Modern Handcraft Inc.,-Abandonment*, 363 I.C.C. 969 (1981).

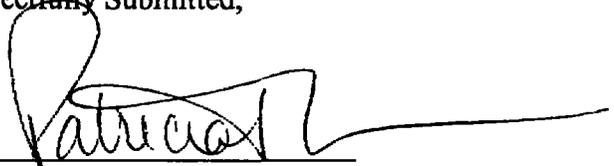
Application of the above provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. Rather, exemption will promote that policy by eliminating unnecessary procedures, and thus will expedite regulatory decisions [49 U.S.C. § 10101(2)], foster sound economic conditions in transportation [49 U.S.C. § 10101(5)], and encourage efficient management of the railroad [49 U.S.C. § 10101(9)]. Furthermore, other aspects of the rail transportation policy will not be adversely affected.

Furthermore, since Pan Am intends to operate the line, no financial assistance will be necessary.

Pan Am understands that, as an applicant in an adverse discontinuance proceeding, it bears the burden of proof to submit sufficient relevant information to allow the STB to reach a decision on the merits and grant the requested relief.

WHEREFORE, Pan Am respectfully requests that this STB grant the requested waivers and exemptions set forth herein.

Respectfully Submitted,

By: 

Patricia A. Morris
Boston and Maine Corporation
Springfield Terminal Railway
Company
14 Aviation Avenue
Portsmouth NH 03801
603-766-2006

*Corporate Counsel for Boston and
Maine Corporation and Springfield
Terminal Railway Company*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of August 2007, a copy of the Petition for Waiver filed in the above-mentioned proceeding was served by first class mail, postage prepaid, upon:

Martin Honigberg
Suloway and Hollis, P.L.L.C.
9 Capitol Street
Concord, N.H. 03301

Hon. John Lynch
Governor
State of New Hampshire
State House, Room 208-214
Concord, N.H. 03301-4990

New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

Bureau of Rail and Transit
State of New Hampshire
Department of Transportation
John O. Morton Building
7 Hazen Drive
Concord, N.H. 03302



Patricia A. Morris