



PAN AM RAILWAYS

IRON HORSE PARK
NO BILLERICA, MA 01862



220048

VIA FEDERAL EXPRESS, OVERNIGHT MAIL

August 14, 2007

ENTERED
Office of Proceedings

AUG 15 2007

Part of
Public Record

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

**RE: DOCKET NO AB 32-100 Boston and Maine Corporation, Inc – Petition
for Waiver : Exhibit A**

Dear Secretary Williams

Enclosed for filing in the above-captioned proceeding, please find copies of Exhibit A, to be attached to the Petition for Waiver filed on behalf of Boston and Maine Corporation and Springfield Terminal Railway Company

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

EXHIBIT A

**ENTERED
Office of Proceedings**

AUG 15 2007

**Part of
Public Record**

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease Agreement") dated as of this 14th day of January, 1985, to be effective as of the Effective Date (as defined in Article XII below), by and between BOSTON AND MAINE CORPORATION, a Delaware corporation ("B&M"), and NEW ENGLAND SOUTHERN RAILROAD CO., INC., a Nevada corporation ("NES").

W I T N E S S E T H:

WHEREAS, B&M operates a line of railroad from Manchester, New Hampshire to Penacook, New Hampshire and beyond to White River Junction, Vermont; and

WHEREAS, NES operates a line of railroad from Lincoln, New Hampshire to Concord, New Hampshire, where it interchanges traffic with B&M; and

WHEREAS, B&M and NES desire to enter into an arrangement pursuant to which B&M will lease to NES and NES will operate over the line of railroad between Penacook and Manchester;

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises and covenants set forth herein and intending to be legally bound, hereby agree as follows:

I. LEASE

1.01 B&M hereby leases to NES, and grants to NES the right to use, operate over and provide rail service on, beginning as of the Effective Date (as defined below) of this Lease Agreement and during the term of this Lease Agreement, subject to the provisions of this Lease Agreement, the following lines of railroad and tracks and facilities of B&M: the portion of the line of railroad known as the New Hampshire main line from milepost B80.68 at Penacook, New Hampshire to milepost B56.00 at Manchester, New Hampshire; the portion of the line of railroad known as the Concord-Lincoln branch line from the switch to the New Hampshire main line at milepost B73.72 to milepost 1.17 (valuation station 56+75); the portion of the former Claremont and Concord Railroad line from the switch to the New Hampshire main line at valuation station 1839+42.15 to valuation station 41+98; and one track for interchange purposes in the B&M yard at Manchester, New Hampshire, as shown in red on the map attached hereto as Exhibit A. NES shall be the lessee of and have the right to use and operate such lines of railroad and such appurtenant facilities, including tracks, bridges, culverts, signals, fences and buildings, as may be required to enable NES to perform its responsibilities and duties under this Lease

Agreement (but excluding such buildings, structures and other facilities as are not so required by NES and excluding such real property as may be outside a thirty (30) foot wide corridor which extends fifteen (15) feet from the centerline of such lines of railroad or outside an eighteen (18) foot wide corridor which extends nine (9) feet from the centerline of any side tracks, spur tracks and sidings and any buildings, structures or other facilities not so required by NES and located on such real property; provided, however, that nothing in this parenthetical phrase shall be deemed to exclude any buildings, structures or other facilities required to enable NES to perform its duties and responsibilities under this Lease Agreement, even if such buildings, structures or other facilities are located outside such thirty (30) or eighteen (18) foot wide corridors), all of which shall be referred to in this Lease Agreement as the "Leased Line". B&M hereby grants to NES, beginning as of the Effective Date and during the term of this Lease Agreement, subject to the provisions of this Lease Agreement, the right to use the running track shown in green on Exhibit A in order to have access to the yard track at the B&M yard at Manchester referred to above.

1.02 During the term of this Lease Agreement, B&M hereby reserves the right to have access to and to use the

Leased Line (a) to operate its trains and to provide rail service in accordance with Section 2.01, Section 2.04 and Section 6.03 below and (b) to perform such maintenance responsibilities with respect to the Leased Line as are imposed upon B&M by this Lease Agreement.

1.03 Notwithstanding any other provision of this Lease Agreement, B&M shall have the right, and NES hereby waives any right or claim, (a) to enter into, terminate, extend, renew or otherwise act with respect to any leases, easements, licenses or other such agreements (except sidetrack agreements and private crossing agreements other than the sidetrack agreement with Public Service of New Hampshire, referred to below) affecting the Leased Line, (b) to collect and receive, for the account of B&M, any rents or other payments in respect of any such leases, easements, licenses or other such agreements, whether in effect as of the Effective Date or entered into thereafter and (c) to sell, retire or otherwise dispose of any property on, or portion of, the Leased Line which may, in the opinion of B&M, no longer be necessary and to collect and retain, for the account of B&M, any proceeds from any such sale, retirement or other disposition; provided, however, that NES shall be entitled to collect and retain, for its own account, any personal property recovered or proceeds

received incidental to any maintenance performed by NES on the New Hampshire main line between Penacook and mile post B71.37 at Bow Junction, on the portion of the former Claremont and Concord Railroad line from the switch to the New Hampshire main line at valuation station 1839+42.15 to valuation station 41+98 or on the portion of the line of railroad known as the Concord-Lincoln branch line from the switch to the New Hampshire main line at milepost B73.72 to milepost 1.17 (valuation station 56+75) (all of which shall hereinafter be referred to as the "North End") pursuant to this Lease Agreement. With the exception of the sidetrack agreement between B&M and Public Service of New Hampshire, involving a sidetrack at Bow, New Hampshire and identified as B&M contract 57470, which B&M shall retain, B&M hereby assigns to NES all sidetrack agreements and private vehicular crossing agreements affecting the Leased Line. NES shall have the right to enter into additional sidetrack agreements or private crossing agreements with respect to the Leased Line, subject, however, to the prior written consent of B&M, and to collect and receive for its own account any payments in respect of such agreements.

1.04 NES may, at its sole cost and expense, undertake such improvements, additions, betterments or alterations of the North End as it may deem to be necessary or

desirable; provided, however, that no such improvements, additions, betterments or alterations shall be undertaken without the express prior written consent of B&M, which consent shall not be unreasonably withheld. Any such improvements, additions, betterments or alterations shall become the property of B&M and shall not be removed by NES at the termination of this Lease Agreement.

II. OPERATION OF LEASED LINE

2.01 During the term and subject to the terms and conditions of this Lease Agreement, NES shall provide common carrier rail service to any customer located on or served by the Leased Line as of the Effective Date and to any customer which becomes located on or served by the Leased Line subsequent to the Effective Date and which is not served by B&M in accordance with Section 2.04 below; provided, however, that B&M shall continue to provide exclusive service pursuant to Section 2.04 below to the electric generating plant of Public Service of New Hampshire located on the portion of the Leased Line between mile post B71.37 at Bow Junction and Manchester (hereinafter referred to as the "South End") at Bow, New Hampshire. Such service by NES shall be equal in all respects, including frequency, reliability and speed, to the service provided as of the Effective Date by B&M or such other manner

of service as may be warranted by traffic levels and operating conditions as they may exist from time to time. NES shall provide all locomotives, personnel and any other equipment necessary in order to provide such service.

2.02 The North End shall be operated under the rules and regulations of NES; provided, however, that in the event that B&M exercises its right to operate over the North End pursuant to Section 6.03 below or in the event that B&M elects to serve any new customer on the North End pursuant to Section 2.04 below, the North End shall be operated under the rules and regulations of B&M.

2.03 The South End shall be operated under the rules and regulations of B&M, which shall be responsible for the control and dispatch of trains. All employees of NES who operate its trains or equipment over the South End shall be qualified under B&M rules and shall have satisfactorily passed an examination by B&M officials.

2.04 Notwithstanding any other provision of this Lease Agreement, B&M shall continue to have the exclusive right to serve for its own account the electric generating plant of Public Service of New Hampshire located on the South End at Bow, New Hampshire. Notwithstanding any other provision of

this Lease Agreement, B&M shall have, at its sole option, the right to serve for its own account any customer which becomes located on or served by the Leased Line subsequent to the Effective Date and which advises B&M and NES that it expects to ship or receive a total of at least seven hundred fifty (750) carloads annually. In the event that B&M does not elect to serve any such new customer on the Leased Line, NES shall provide service in accordance with Section 2.01 above. In the event that, subsequent to the Effective Date, a new customer becomes located on or served by the Leased Line and such new customer advises B&M and NES that it expects to ship or receive a total of fifteen (15) or more carloads each time service is required, B&M and NES shall attempt to agree upon joint routes and rates with respect to such traffic. If routes and rates acceptable to B&M cannot be agreed upon, B&M shall have the right, at its sole option, to serve such new customer for its own account. In the event that B&M exercises the right pursuant to this Section 2.04 to serve any such new customer (a) located on or served by the North End, B&M shall pay such portion of the expenses to maintain the North End as the annual gross ton miles handled by B&M on the North End bear to the total annual gross ton miles on the North End and (b) located on the Leased Line, NES shall have no responsibility (i) for the cost of any improvements or facilities required to provide

such service or (ii) to provide such service unless it agrees to do so.

2.05 Traffic which originates or terminates on the Leased Line (other than traffic which is handled by B&M pursuant to Section 2.04 above) shall be interchanged at Manchester. ~~NES and B&M shall establish joint routes and rates with respect to such traffic.~~ For each carload so interchanged up to two thousand three hundred (2,300) carloads in any calendar year, NES shall receive a fixed division equal to twenty three (23) per cent of the B&M revenue for each such carload. For each carload so interchanged in excess of two thousand three hundred (2,300) carloads in any calendar year, NES shall receive a fixed division equal to fifteen (15) per cent of the B&M revenue for each such carload. All car hire charges and demurrage with respect to traffic on the Leased Line shall be for the account of NES, except that NES shall not be responsible for car hire payments with respect to cars of B&M, Maine Central Railroad Company, Delaware and Hudson Railway Company, any subsidiary of any of them or any other subsidiary of Guilford Transportation Industries, Inc. or with respect to cars moving in B&M trains pursuant to Section 2.04 above.

AM
1097

2.06 With respect to traffic which originates or terminates on the Leased Line (other than traffic which is handled by B&M for its own account pursuant to Section 2.04 above), NES shall be responsible for the notification of customers, the collection of demurrage, the maintenance of car accounting and other records pertaining to such traffic and the settlement of interline car accounts. B&M shall be responsible for the preparation of waybills, the billing of customers, the collection of bills and the settlement of interline accounts for freight and for loss and damage.

2.07 B&M shall remit payments to NES for freight charges for local or received traffic as promptly as practicable but in no event later than the last day of the calendar month following the month in which the service relating to such charges was provided. B&M shall remit payment to NES for freight charges for forwarded traffic within ten (10) days after the receipt by B&M of the interline settlement from the settling carrier for the service relating to such charges. Any other amounts due from either party to the other in accordance with this Lease Agreement shall be paid within ten (10) days after the receipt by B&M of the interline settlement from the settling carrier for the service relating to such charges. Any other amounts due from either party to

the other shall be paid within thirty (30) days after a bill has been rendered.

2.08 NES and B&M shall each perform its respective duties and responsibilities pursuant to this Lease Agreement in compliance with Federal, state and local laws and administrative regulations relating to such performance.

2.09 NES shall bear and be responsible for all costs of its operation of the Leased Line.

2.10 Each party shall have the right, during normal business hours, to inspect the books and records of the other party relating to this Lease Agreement.

III. MAINTENANCE

3.01 NES shall, at its own expense, maintain the North End in good condition and repair so that rail operations can be conducted as required by this Lease Agreement and as warranted by traffic levels in a safe, efficient and economical manner and in compliance with all federal and state laws and regulations; provided, however, that in no event shall the condition of the line be less than the Federal Railroad Administration Class I standard. In the event that the standards of the Federal Railroad Administration are amended,

the parties shall attempt in good faith to agree upon a mutually acceptable standard of maintenance in light of any such amendment and other relevant factors such as the then current traffic levels and service requirements. Any property or materials used by NES to replace or repair any property or materials in the North End shall be of equal or better quality compared to the property or materials so replaced or repaired.

3.02 B&M shall, at its own expense, (a) maintain such buildings, structures and other facilities located on or appurtenant to the Leased Line as are not required by NES to enable it to perform its duties and responsibilities under this Lease Agreement and (b) maintain the South End, the running track connection and the interchange track shown in red on Exhibit A (or such other interchange track as the parties may designate) in good condition and repair so that rail operations can be conducted as required by this Lease Agreement and as warranted by traffic levels in a safe, efficient and economical manner and in compliance with all federal and state laws and regulations.

3.03 B&M shall provide NES with all documents necessary for NES to maintain the North End, including but not limited to valuation maps, track charts, maintenance and production records, structural plans for bridges, signal plans

and schematic diagrams for at-grade road crossings. B&M shall cooperate in providing relevant data to NES relating to customers to be served by NES.

IV. LIABILITY AND INSURANCE

4.01 With respect to operations, incidents or activities on the Leased Line involving only one of the parties or the negligence of only one of the parties, each such party shall be responsible for or bear, and shall indemnify and save harmless the other party and its officers, directors, employees and agents from and against, all liabilities, claims, damages, charges, costs or expenses of whatever nature, including without limitation damage to any equipment or lading and costs or expenses associated with injury to or the death of any persons, including damage to any property of the other party or injury to or death of any employee or agent of the other party.

4.02 With respect to operations, incidents or activities on the Leased Line involving both B&M and NES or the negligence of both B&M and NES, each party shall be responsible for or bear one hundred (100) percent of its own damages, charges, costs or expenses of whatever nature and fifty (50) percent of the liabilities, claims, damages, charges, costs or expenses of whatever nature of any third parties and of any

items which are common to the parties hereto, including but not limited to costs to repair tracks and clear wrecks.

4.03 At all times during the term of this Lease Agreement, NES shall maintain, at its sole expense, such comprehensive railroad liability policy or policies of insurance, in form and from companies approved by B&M, providing full insurance coverage against any and all claims, losses, costs, damages or expenses on account of injury (including death) to persons or damage to property, including employees and property of B&M, as to which NES has assumed responsibility pursuant to Sections 4.01 and 4.02 above. Subject to self-insured deductible amounts of Twenty Five Thousand Dollars (\$25,000), such policy or policies shall have minimum limits of Three Million Dollars (\$3,000,000) in any one occurrence. Such policy or policies shall refer to the assumption of liability pursuant to this Lease Agreement and shall provide that B&M shall be notified of cancellation or any restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment.

V. TAXES

5.01 B&M (a) shall file any returns or reports required by New Hampshire in respect of real property,

franchise, corporate, capital stock or income taxes relating to the Leased Line and (b) shall pay (i) any such taxes assessed on the basis of the earnings or income of B&M in respect of the Leased Line and (ii) any such real property taxes.

5.02 NES shall cooperate with and provide information to B&M to permit B&M to file any returns or reports required by New Hampshire in respect of franchise, corporate, capital stock or income taxes relating to the Leased Line or the operation of the Leased Line, and NES shall pay any such taxes assessed on the basis of the earnings or income of NES in respect of the Leased Line or on the basis of the operation or use of the Leased Line by NES.

5.03 Nothing in this Article V shall require either party to pay any tax which is being contested in good faith.

VI. DEFAULTS BY NES AND REMEDIES OF B&M

6.01 The following events or occurrences shall constitute defaults by NES under this Lease Agreement:

- (a) the failure or inability of NES for a period of five (5) consecutive days to provide either service which is consistent with the standard required by Section 2.01 above or any service at all on the Leased Line, except

when such failure or inability is caused by an event or occurrence which is not attributable, directly or indirectly, to any act or failure to act by NES;

(b) the failure to maintain the North End in accordance with the standard established in Section 3.01 above;

(c) the failure to pay any of the costs and expenses to be paid by NES pursuant to this Lease Agreement (except that NES shall have the right to offset any delinquent amounts which may be owed by B&M to NES pursuant to this Lease Agreement for purposes of determining whether NES has failed to pay B&M); or

(d) the failure to comply with or to perform any other covenant or agreement undertaken by NES pursuant to this Lease Agreement.

6.02 In the event that B&M gives NES written notice of the occurrence of any default under this Lease Agreement and NES does not cure any such default within twenty (20) days after such notice, this Lease Agreement shall terminate and be of no further force or effect.

6.03 Notwithstanding any other provision of this Lease Agreement, in the event that NES fails or is unable to provide service which is consistent with the standard required by Section 2.01 above, B&M may, at its option, and whether or not any such failure or inability constitutes a default pursuant to Section 6.02(a) above, provide service on the Leased Line itself or through a carrier it designates until such time as NES resumes the provision of service which is consistent with the standard required by Section 2.01 above.

VII. TERM

Unless terminated earlier pursuant to Section 6.02 above, the initial term of this Lease Agreement shall be for a period of ten (10) years following the Effective Date. This Lease Agreement shall continue in effect thereafter until it is terminated pursuant to Section 6.02 above or by either party giving the other party three (3) months' prior written notice of its intention to so terminate this Lease Agreement.

VIII. TERMINATION OF 1982 AGREEMENT

The Agreement dated September 20, 1982, by and between NES and Robert W. Meserve and Benjamin H. Lacy, Trustees of the property of Boston and Maine Corporation, Debtor shall be terminated as of the Effective Date of this

Lease Agreement. Beginning as of the Effective Date, NES and B&M shall interchange traffic which originates or terminates on the line operated by NES between Concord and Lincoln at Manchester, and NES shall receive a fixed division equal to thirty seven (37) per cent of the B&M revenue for each carload of such traffic.

IX. NOTICES

All notices, requests and demands to or upon the parties hereto shall be deemed to have been given or made when deposited in the United States mails, postage prepaid, addressed as follows:

To:

**President
New England Southern Railroad Co., Inc.
244 North Main Street
Concord, New Hampshire 03301**

with a copy to:

**William V. DePaulo
Wheeler and Wheeler
1729 H Street, N.W.
Washington, D.C. 20006**

To:

**Vice President - Law
Boston and Maine Corporation
Iron Horse Park
N. Billerica, Massachusetts 01862**

with copies to:

James E. Howard, Esq.
Kirkpatrick & Lockhart
One Boston Place
Suite 3210
Boston, Massachusetts 02108

and

Guilford Transportation Industries, Inc.
171 Orange Street
New Haven, Connecticut 06510

X. NO WAIVER; CUMULATIVE REMEDIES

No failure to exercise, and no delay in exercising on the part of either party of, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power, or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the parties hereunder are cumulative and not exclusive of any rights or remedies provided by law, and all such rights and remedies may be exercised singly or concurrently.

XI. ASSIGNMENT

This Lease Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. NES shall not assign this Lease Agreement or any portion hereof except upon the prior, written consent of B&M.

XII. CONDITIONS PRECEDENT AND EFFECTIVE DATE

The obligation of B&M to consummate the transactions contemplated by this Lease Agreement and the effectiveness of this Lease Agreement are subject to the satisfaction or waiver of the following conditions:

(a) This Lease Agreement and the transactions contemplated hereby shall have been approved or exempted, by orders which have become final, by the Interstate Commerce Commission and any other regulatory agency which may have jurisdiction;

(b) B&M shall have complied with any notice requirements or any other provisions relating to any labor protective conditions which may be imposed by the Interstate Commerce Commission or any other regulatory agency in connection with the approval or exemption of this Lease Agreement or the transactions contemplated hereby; and

(c) Northern Railroad shall have provided B&M such consent or approval as B&M may deem necessary or desirable with respect to those aspects of this Lease Agreement and the Leased Line relating to property owned by Northern Railroad and leased to B&M.

This Lease Agreement shall become effective on the "Effective Date", which shall be a date mutually agreed upon by the parties and which shall not be more than thirty (30) days after the satisfaction or waiver of the last to be satisfied or waived of the foregoing conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed and delivered as of the day and year first above written, to be effective as of the Effective Date.

BOSTON AND MAINE CORPORATION

Attest:

R. E. Roy

By

Daniel A. Fitch

NEW ENGLAND SOUTHERN RAILROAD
CO., INC.

Attest:

Katherine M. McCarty

By

Arthur H. Chambers