

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35147

NORFOLK SOUTHERN RAILWAY COMPANY, PAN AMERICAN RAILWAYS,
INC., ET AL – JOINT CONTROL AND OPERATING POOLING AGREEMENTS –
PAN AM SOUTHERN LLC

REQUEST TO RECONSIDER THE BOARD'S RULING
BY THE COMMITTEE TO IMPROVE RAIL SERVICE IN MAINE

Recent developments should be considered

Since the Board issued their decision on this matter, events have transpired which we believe should alter the Board's ruling.

Who we are

The Committee to Improve Rail Service in Maine is a group comprised of business, political and civic leaders who have joined to intervene in the matter of Pan Am Southern LLC, in an effort to improve rail service in our State. We welcome the investments to be made by Norfolk Southern (NS) Railway and the resultant improvements in infrastructure that will be realized through the creation of Pan Am Southern (PAS). We ask that the Board look closely at the events that have transpired since rendering their decision on March 10, 2009.

Pan Am Railways operating practices are anti-competitive

We maintain that Pan Am Railway's (PAR) operating practices, in and of themselves are anti-competitive. Furthermore, these practices are deliberate in nature and began the day that PAR principals took control of the Maine Central and Boston & Maine Railroads. The emergence of Guilford Transportation/Pan Am Railways roughly coincides with the passage of the Staggers Act. In this time frame, the amount of freight moving by rail in America has more than doubled.¹ The amount of freight moving over the Maine Central Railroad is less than half the volume that was recorded just prior to Guilford Transportation's purchase of this railroad.² Maine, the second largest paper-producing state (by tonnage) in our nation³ is 48th out of 50 states in volume of commerce moving by rail.⁴ More than 90% of Maine's manufactured products move by truck.⁵ To approve the formation of Pan Am Southern without addressing these anti-competitive practices is a violation of the Surface Transportation Board's mandate.

Verso Paper

On March 17, 2009, Verso paper President and CEO Mike Jackson personally delivered to Maine Governor John Baldacci a company-initiated report entitled, "*Maine on Paper, An industry we can't afford to lose*".⁶ Verso Paper has two paper mills in Maine, and may very well be PAR's largest customer by tonnage. The report highlights the problems that Verso encounters on a daily basis in operating the Maine paper mills. In the section of the report on Transportation, Verso included the following:

Transportation is another key factor in the competitiveness of Verso and Maine's paper industry. We need a regular supply of bulk raw materials coming into our mills and a steady stream of finished paper leaving our mills. Because of the massive volumes of material coming into and going out of our mills, dependable rail service is essential.

Most customers for Verso's paper products are in the South and Midwest. With a roll of our paper weighing more than 5 tons, the fewer times that we or our customers have to handle the product the better. That is why the ideal situation is to load paper onto a rail

¹ http://www.aar.org/PubCommon/Documents/AboutTheIndustry/RRState_Rankings.pdf

² [Atlantic Northeast Rails and Ports](#); 08#02a, 29 February 2008, pg. 5 and Mountain Division Rail Study, Chapter 1, pg. 20, Maine Department of Transportation; December 2007

³ http://www.tappi.org/s_tappi/doc.asp?CID=183&DID=549321

⁴ www.asce.org/reportcard/pdf/me.pdf

⁵ www.mmta.com/public/index.cfm?fuseaction=articles.view&id=4842

⁶ <http://www.versopaper.com/about/pressreleases/MaineonPaper.pdf>

car right at the plant and ship it directly to the customers, most of whom have their own rail sidings. It is very expensive and impractical to store paper in our warehouses or to transfer it between carriers en route to customers.

From an environmental standpoint as well, rail is a far more efficient way to move paper. A rail car can haul close to 80 tons of paper, while a truck can haul only about 20 tons. Considering that our Bucksport mill produces about 50 tons of paper per hour, relying heavily on trucking is simply not a viable alternative for shipping large amounts of paper.

Unfortunately, while we are heavily dependent on rail service for receiving raw materials and shipping product, we have only one choice when it comes to rail service. We have a critical need for more modern equipment and more reliable service from this carrier.

The two Verso paper mills in Maine are served exclusively by PAR. The report goes on to highlight the fact that Verso will use trucks as needed:

While rail is by far the most efficient way to move products in and out of the mill, Verso also relies heavily on trucking companies. Raw wood comes to the mill almost exclusively by truck and around 20 percent of our paper is shipped by truck. We enjoy a good working relationship with the trucking companies that we use. We have worked with them on scheduling deliveries and pick-ups and other logistical issues designed to avoid idling times and unnecessary fuel use, all of which helps to reduce costs and greenhouse gas emissions.

When the railroad chooses not to compete, the product will move by truck. Again, more than 90% of Maine's manufactured goods move by truck. The situation is particularly frustrating because, not only are we seeing many more trucks on Maine's roads, but Maine's connecting railroads have lost traffic because of PAR's choice not to compete. In 1972, the Maine Central interchanged 37, 667 carloads of freight with the Bangor and Aroostook Railroad (BAR).⁷ Today, we can personally attest to the number being less than 5,000 railcars being interchanged between PAR and BAR's successor; the Montreal, Maine and Atlantic. If one railroad simply chooses not to provide service, and as a result, other railroads lose traffic, is rail competition being preserved?

⁷ Mountain Division Rail Study, Chapter 1, pg. 20, Maine Department of Transportation; December 2007

The Verso report goes on to say:

Maine must realize that good rail service is critical to the success of its paper industry and other large manufacturers, especially as the cost of gasoline and diesel continue to rise. The adequacy of rail service is not just an issue between the railroad owner and its customers; it is a major economic development and public policy issue for Maine.

We have cited examples where PAR has simply chosen not to compete. Before PAR, the largest train by tonnage on the Maine Central Railroad was “the wood job”.⁸ This was a train that would move more than one hundred railcars of pulpwood each day. More than 2000 cord of wood would move on just one train; pulpwood that came off the BAR in interchange and from points in eastern Maine, moving to the mills in the south of Maine. Today, this pulpwood is moving by truck because PAR chooses not to compete. Just this week, less than two weeks after your approval of Pan Am Southern, PAR has stopped service on Sundays. Maine’s paper mills are still operating. They are just not receiving service.

This isn’t simply a matter of market forces working against a railroad to reduce the railroad’s traffic base. As the Verso report states, “Maine is producing more paper than at any time in its history”.⁹ The reason that more of this product does not move by rail is because the railroad has chosen not to invest in new railcars, in rebuilding locomotives and maintaining their right of way. The railroad has chosen not to compete. We reiterate the question, if a railroad chooses not to compete, is rail competition being maintained?

Other developments

Just this past Monday; March 23, 2009, a Middlesex, Massachusetts Superior Court Jury convicted PAR, as well as the Boston and Maine, the Maine Central and the Springfield Terminal Railroads of failing to report a hazardous spill and contamination on its rail yard property in Ayer.¹⁰ Over 900 gallons of diesel fuel had leaked from a locomotive, and had not been reported. This is not PAR’s first experience with oil spills. On September 18, 2007, Maine Department of Environmental Protection officials cited PAR for its failure to maintain equipment and manage waste oil at the railroad’s Rigby

⁸ Atlantic Northeast Rails and Ports; 08#02a, 29 February 2008, pg. 8

⁹ <http://www.versopaper.com/about/pressreleases/MaineonPaper.pdf> pg. 3

¹⁰ <http://www.mass.gov/?pageID=cagohomepage&L=1&L0=Home&sid=Cago>

Yard in South Portland, Maine.¹¹ This action was taken following the release of at least 500 gallons of oil from the railroad facility into a storm drain, which then emptied into a nearby pond. Town officials in East Deerfield, Massachusetts have also taken issue with PAR on the railroad's pollution control plan in that municipality.¹²

Under the National Environmental Policy Act, the Board must take into account in its decision-making the environmental impacts of its actions, including direct, indirect and cumulative impacts. The Board must consider these impacts before making its final decision in a case. Given PAR's record, is the Board truly satisfied that it has taken full account of PAR's environmental performance?

A need for public hearings and conditions

We are a grassroots organization. Our presence lacks the standing of other parties of record in these proceedings, such as the Maine Department of Transportation (MDOT). Our objective; to improve rail service in Maine, is not a big news item. Still, we see the results of PAR's operating practices on a daily basis. We see far fewer trains moving on the rail lines, and when we do see a train, it is moving at a snail's pace. We know that Maine's railroads are shipping far less of the state's commerce than they did before PAR arrived. We see the heavy truck traffic on Maine's roads. We read the complaints about rail service that companies such as Verso are making known. We are aware of PAR's poor environmental standing. We acknowledge that the MDOT supports the creation of Pan Am Southern – but does so with the recognition that investments in PAR's infrastructure are badly needed. We have read the decision issued by the US Department of Transportation, which questioned the competence of the management team of Boston – Maine Airways, the same management team that oversees Pan Am Railways. This was a decision rendered by the very arm of our government in which the Board is a member.

We also know that it is the responsibility of the Board to ensure that America's railroads are serving in the public interest. We need the Board's help to correct a big problem. By approving the formation of Pan Am Southern without conditions, are you not rewarding PAR for choosing not to compete, for being poor environmental stewards, and for questionable managerial competence?

¹¹ [Portland Press Herald](#); September 19, 2007

¹² [www.recorder.com](#); 7 February 2007

We are asking that the Board place the decision rendered on Pan Am Southern; dated March 10, 2009 into abeyance, until such time that the Board has provided an opportunity for public hearings on this matter. We ask for the opportunity for a public hearing in the State of Maine, and for any other states that the Board deems appropriate. Following the public hearings and the Board's reconsideration, we again ask that the following conditions be imposed on PAR before the formation of Pan Am Southern is approved:

1. That within three years of the STB's approval in the matter of Pan Am Southern, Pan Am Railways agrees to upgrade and repair all of their track lying within the State of Maine; such that PAR will be in full compliance with the "Box B" speeds listed in their own Timetable Number 5, which was effective on April 1, 2006.
2. That PAR commit to the establishment of a comprehensive locomotive rebuild program, such that within four years of the STB's approval in the matter of Pan Am Southern, all Pan Am Railways/Springfield Terminal/Pan Am Southern locomotives have been rebuilt to full industry standards, in compliance with all current environmental standards and with the installation of auxiliary power units (APU).
3. That PAR commit to the assignment and maintenance of no less than 50 locomotives to their rail operations within the State of Maine. We calculated this number of locomotives as the number needed to handle the 69,000 loads that PAR moves within the State of Maine each year. The number also corresponds to the minimum number of locomotives needed to provide ample opportunity for normal maintenance and repair, as well as complete overhaul, while still providing adequate rail service for the following Maine points on the PAR system:
 - a. Bangor to Mattawamkeag and return
 - b. Bangor to Portland and return
 - c. Bangor to Bucksport and return
 - d. Waterville to Portland and return
 - e. Rumford to Portland and return
 - f. Madison to Waterville and return
 - g. Bangor switchers
 - h. Waterville switchers
 - i. Rumford switchers
 - j. Riley's switchers

- k. Rigby switchers
- l. Woodland switcher

4. That PAR commit to a formal program to ensure that all Maine rail shippers have adequate railcar resources to meet their shipping needs. Such program will be devised by the STB, the Maine Department of Transportation (MDOT), the Maine Attorney General and PAR.

5. That PAR agrees to a penalty program to be devised by the STB, MDOT, the Maine Attorney General and PAR for failure to meet the conditions listed above.

'I, Thomas D. Hall, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading. Executed on December 15, 2008.'

A handwritten signature in black ink, appearing to read 'T. D. Hall', with a stylized flourish at the end.

Thomas D. Hall
Chairman
The Committee to Improve Rail Service in Maine
176 Merrill Road
Pownal, Maine 04069
(207) 688-4294

Dated: March 28, 2009

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NORFOLK SOUTHERN RAILWAY COMPANY, PAN AMERICAN RAILWAYS,
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PAN AM SOUTHERN LLC

CERTIFICATE OF SERVICE

In accordance with the Board's decision in the above referenced matter, served June 26, 2008, this will certify that The Committee to Improve Rail Service in Maine has this day served notice on all parties of record with a copy of this document, sent by US mail, postage pre-paid.

Sincerely,



Thomas D. Hall
Chairman
The Committee to Improve Rail Service in Maine
176 Merrill Road
Pownal, Maine 04069
(207) 688-4294

Dated: March 28, 2009

