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Issue 10#09A 18 September 2010

*Article unchanged from e-bulletin.

**Blue type in article: changes from e-bulletin.

REGIONAL ISSUES

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ST: TCU ratifies contract.*

NEW YORK

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MAINE

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MCER: ABC&D, Ware argue about tiny railroad.*

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NHDOT: Asks planning grant for Concord service.

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Seaview/PW: AAR says NORAD could rate very high as auto facility. Why Porsche likes it.*

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Sydney: Province advances design funds; Marine Group hopes to award dredge contract this year.*

RAIL SHIPPERS/RECEIVERS

PEOPLE, POSITIONS, EVENTS

Editorial: Fink’s political donations influence?*

FROM THE PUBLISHER

Attend NEARS!

This semiannual meeting provides a great place to network and get information from railroads and shippers. I really recommend it. See agenda in these pages. Only in the e-issue.

- Chop Hardenbergh Next formal issue 4 October

REGIONAL ISSUES

NS-PAS: FULFILLING THE DEAL*
30 July, Roanoke, Virginia. **NS IS PAYING PAS EARLY FOR ITS HALF OF THE JOINT VENTURE**, according to annual and quarterly reports to the SEC.

The agreement: the notes
To recount the transaction, NS agreed to transfer cash and other property worth $140 million to PAS, the joint venture. PAS will pay out $87.5 million of that in capital improvements, and pay $50 million to B&M for the value of the trackage B&M contributed to PAS.

Under the agreement, NS would pay $2.5 million to buy the San-Vel and the Mechanicville yards. Then it pays 30 days after closing, which occurred on 9 April 2009 [see 09#04A], to PAS $59.5 million; $35 million one year after closing, $30 million two years after closing, and $10 million three years after closing [see 08#06A].

The NS annual report for 2009 stated that it had given PAS notes for the amounts due: ‘NS also issued a total of $75 million in non-interest bearing notes payable with maturity dates beginning in 2010 and ending in 2012 as part of its total investment in Pan Am Southern LLC.’

The payments
By the end of 2009, according to the NS annual report, the railroad paid $69 million, though the $2.5 million purchase price plus the first tranche totals $62 million.

By the end of 1Q10, NS paid a total of $85 million, apparently paying ahead of schedule, for the second tranche was not due until 9 April 2010.

By the end of 2Q10, NS paid to PAS $106 million, though the first two tranches plus the purchase price totalled only $96 million. It still owned $34 million over the next two years, the quarterly report said. {texts of reports}

Asked why the payments were made early, NS spokesperson Rudy Husband replied, 'Our SEC filings speak for themselves.' {e-mail to ANR&P 14.Sept.10}

PW: TREASURER
13 September, Worcester. **PW’S NEW TREASURER BEGAN WORK**. Daniel Noreck worked as senior audit manager at Lefkowitz, Garfinkel, Champi & DeRienzo P.C. in Providence, RI since July 2003. Jade Y. Tsang, who served as treasurer and chief financial officer on an interim basis since the departure of former Treasurer and Chief Financial Officer Elizabeth A. Deforge [see 10#07B] resumed her duties as assistant controller and manager of taxes. {SEC filing 30.Aug.10}

ST: TCU CONTRACT*
30 August. **BY A FOUR-TO-ONE MARGIN, TRANSPORTATION COMMUNICATIONS UNION (TCU) MEMBERS RECENTLY RATIFIED** a new contract with Springfield Terminal Railway Co., which is owned by Pan Am Railways. The new contract includes 18% wage increases spread out over a five-year period, according to the TCU.

‘The Transportation Communications International Union represents approximately 46,000 members in the U.S., most employed in the railroad industry. In July 2005, TCU affiliated with the IAM [International Association of Machinists], with full merger to occur no later than January 2012.’ {TCU website}
NYA: TINY RR GETS THE OK*
9 September, Yaphank. **THE STB’S DECISION GRANTED US RAIL PERMISSION TO BUILD AND OPERATE** the 18,000 feet of rail it has long sought [see 10#08B] to deliver crushed stone from north of Albany by rail to Long Island. US Rail and the Town of Brookhaven were at an impasse at the end of 2009 about the proposed transload.

**Board mediation**
‘By decision served February 3, 2010, the Board directed US Rail and Brookhaven to appear and participate in a meeting facilitated by Board staff in an attempt to resolve the parties’ differences. Brookhaven and US Rail met with the Board’s staff on February 25, 2010. On March 30, 2010, US Rail informed the Board that it had resolved its differences with Brookhaven and asked that the proceeding be restored to the active docket. On April 5, 2010, the Board received a letter from Brookhaven withdrawing its opposition to US Rail’s project and also requesting that the matter be returned to active status.’

**Environmental issues**
The Board noted that its Section of Environmental Analysis, in its final Environmental Assessment [see 10#08B] found no significant environmental impact as long as certain mitigation measures were adopted.

**A fast track**
‘On August 13, 2010, US Rail filed a motion requesting that this decision be served within 30 days of August 10, 2010, and the exemption be made effective within 10 days of the service date. In support, US Rail cites “significant and ongoing debt service obligations” and other costs. Inasmuch as no party has demonstrated any potential for significant environmental impacts from the proposed rail line or from the BRT site, we will make our decision effective September 20, 2010.’ {STB website, decisions page, FD 35141}

US Rail Corporation not US Rail Partners
The operator at Yaphank, US Rail Corporation, is not the same as US Rail Partners, Limited, of Des Plaines, Illinois. ‘Partners’ will operate Eastern Berks Gateway Railroad Company, approximately 8.6 miles of railroad, known as the Colebrookdale Line in Pennsylvania. {editor}

**CONNECTICUT**

PW v HRRC: ADVERSE ACTION*
10 September, DC. **PW WANTS TO KICK HRRC OFF THE MAYBROOK**, according to a filing this day at the Surface Transportation Board. The problem: HRRC has not repaired a section of out-of-service track which PW uses to reach the Tilcon facility in Danbury [see 10#06A].

**The situation; the existing trackage rights agreement**
‘P&W intends to file an application for adverse abandonment of a 12.8-mile segment of track on the HRRC’s Danbury Secondary Line in Fairfield and New Haven Counties, Connecticut and, thereafter, submit an offer to purchase that track in accordance with 49 U.S.C. §10904 and 49 C.F.R. §1152.27.

‘Under the terms of a Trackage Rights Agreement entered into on or about March 15, 1993 between P&W's
In 1993, Conrail sold some of its freight rights and track to PW. For the purpose of the transaction, PW formed Connecticut Rail Systems, Inc. ('CRS') (P&W and CRS are together referred to herein as "P&W"). And HRRC's predecessor in interest, Danbury Terminal Railroad Company. P&W was granted trackage rights over that portion of the Danbury Secondary Line that runs between Derby Junction and Danbury, Connecticut, a distance of approximately 27 miles, in order to serve a P&W customer.

'As HRRC has failed to maintain a segment of the Danbury Secondary Line between Derby Junction and Newtown, Connecticut, a distance of approximately 12.8 miles, HRRC has declared these tracks out of service. [In footnote: ‘Other portions of the Danbury Secondary Line have been subjected to speed restrictions and are considered to be Excepted Track, as that term is defined by the Federal Railroad Administration in 49 C.F.R. §213.4.’] Moreover, despite P&W's requests that HRRC perform the necessary repairs and maintenance to put these tracks back into service, HRRC has refused, and has essentially implemented a de facto abandonment of that segment of the line.

For reasons that will be explained more fully in P&W’s adverse abandonment application, HRRC's de facto abandonment of this section of the Danbury Secondary Line will effectively preclude P&W from continuing service to a major rail-served customer, thus depriving the customer of essential rail service and P&W of significant revenue.' [The customer is Tilcon. See 10#06B for details and map.]

**Can’t use alternative route on Metro-North**

In the cover letter, PW attorney Ed Greenberg added: ‘As the HRRC has failed to maintain the line, it has degraded to the point that HRRC has now placed it out of service, which compels P&W to provide service to the shipper over a substantially more circuitous routing.

‘However, the Connecticut Department of Transportation has recently announced that it intends to schedule outages during the usual hours of P&W operations - for the purpose of rehabilitating the track for the benefit of Metro North Commuter Railroad in Connecticut - a significant portion of the alternative routing that P&W has been using most recently to serve this shipper.’

[PW starts the train at Tilcon’s quarry in Reed’s Gap, a part of Wallingford, and moves it south to New Haven, then along the North East Corridor, up from Milford to Derby Junction on Metro-North’s Waterbury branch, and then onto HRRC’s line.

Because the line is now out of service, PW runs the train on the NEC farther south to Norwalk and then up Metro-North’s Danbury branch. Editor]

**Can’t use Feeder Line Application**

PW most easily could use the feeder line application, it contended. ‘However, it appears that P&W is not able to utilize the Feeder Railroad Development Procedures in 49 U.S.C. §10907 and 49 C.F.R. Part 1151, which were designed by Congress as a method to address situations of this nature because it is a Class II railroad. As such, the Board's regulations preclude P&W from prosecuting an application under those sections. (See 49 C.F.R. § 1151.4(a)(2).)' [See box.]

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2 Danbury Terminal Railroad was related to HRRC, and created out of the Conrail line from Derby to Beacon NY (the Maybrook). In early 1995, Danbury Terminal sold to Metro-North the trackage in New York. The Danbury merged into the HRRC at the end of 1995. [See 99#02.] Conrail retained rights to serve Tilcon, and transferred that right to PW in the 1993 transaction. See Note above.

3Footnote in the petition: ‘An exemption approving this transaction was granted by the Interstate Commerce Commission ("ICC") in Connecticut Rail Systems, Inc. - Trackage Rights Exemption - Danbury Terminal Railroad Company, Finance Docket No. 32770 (Decision served March 29,1993).’
[Not only the regulation. The statute, 49 U.S. C.10907(a), requires an application by a financially responsible person and specifically states: “In this section, the term “financially responsible person” means a person who - (1) is capable of paying the constitutional minimum value of the railroad line proposed to be acquired; and (2) is able to assure that adequate transportation will be provided over such line for a period of not less than 3 years.

Such term includes a governmental authority but does not include a Class I or Class II rail carrier. (emphasis added)” Editor]

Must proceed under adverse abandonment

‘Instead, P&W is required to file an adverse abandonment application and bear the cost of the much more significant filing fees that are required: $1,800 to file a petition to waive inapplicable requirements of the abandonment regulations and $22,600 to file the adverse abandonment application, rather than the $2,600 fee for filing a petition under the Feeder Railroad Development regulations (which would, except for the Class II railroad restriction, seem to be the appropriate procedure to follow in this situation).’

Posture before the Board

PW told the Board it intended to file the application for adverse abandonment, and thereafter submit an offer to purchase the line abandoned.

It argued that the STB, and the ICC before it, had in many cases found that the requirements for an abandonment were not necessary in an adverse case. PW asked the Board to waive the requirements of a system diagram map, notice and publication, service data, environmental and historical data, and notice to labor organizations. [When ST filed the adverse abandonment against NEGS in 2007, it too sought the waivers, which the Board granted in part and denied in part. See 08#01B.]

Therefore, PW filed the petition to waive some of the requirements.

Filing fees

In his cover letter, Greenberg asked for a reduction of the filing fees, though he did not mention that in the body of the petition for waiver:

‘As noted above, P&W is a Class II railroad, and the expense of prosecuting the adverse abandonment application and purchasing the line is already a significant financial burden. If it is compelled to pay the fees associated with the waiver and the adverse abandonment application, P&W’s resources would be substantially strained and the burden of doing so would constitute an undue hardship.

‘Under these circumstances, where P&W is not attempting to broaden its operations but instead continue operating to an important rail-served customer, and where use of the Board's resources to process this matter is not what would be required in a normal abandonment proceeding, P&W believes that a waiver of these filing fees is in the best interest of the public.’ {STB website, filings page, Docket No. AB-254 (Sub-No. 10)}
MAINE

MAINE STATE RAIL PLAN*
10 September. **MDOT HAS MISSED THE DATES ON ITS WEBSITE**, admitted Carol Morris, Public Outreach Coordinator for the plan and the website. “The technical consultants are working on the final draft, incorporating comments from DOT.” She did not have a due date for the draft to emerge on the website, which as of this day claimed a draft would be posted in July, and a final plan in August [see 10#07A]. {ANR&P discussion}

ST/NNEPRA: NO RAIL NUTS*
7 September, Brunswick. **NO PROGRESS HAS BEEN MADE IN THE GRANTING OF A WAIVER FROM THE FRA** to allow the NNEPRA to use foreign-made nuts [see 10#08A]. The FRA has only stated that they have received the application, said Patricia Quinn, NNEPRA executive director

She viewed it as a “minor problem.” {ANR&P’s Chuck Hastings discussion 7.Sep.10}

The UTU and the BLET filed complaints against the NNEPRA waiver application stating that American made nuts can be found and purchased by the NNEPRA. The waiver request of the NNEPRA should be denied, because track-nut fasteners are readily available here in the homeland, produced by American workers.

UTU and BLET on the web found Grainger, an industrial supply company, stocks the required parts. (1 1/8-inch square nuts) {email from George Casey 29.Aug.10; newsflash from utu.org}

MMA: EXAMPLE FOR THE STB
15 September, DC. **THE STB’S HANDLING OF THE MMA ABANDONMENT ILLUSTRATED THE BOARD’S NEW APPROACH**, said Chair Daniel Elliott in testimony before the US Senate Commerce Committee, explaining his broad new approach.

‘A carrier may not cease serving a line of railroad without prior approval from the Board. In such cases, the Board looks to balance the public interest in continued rail service with the needs of rail carriers to earn adequate revenues.

‘In February 2010, the Montreal Maine & Atlantic Railway (MMA) filed an application to discontinue service and abandon the line. The State of Maine opposed MMA’s proposal, and sought funds—partially through a successful bond referendum earlier this year—to acquire the line and preserve service, should the Board grant MMA's application.

‘The Board held a public field hearing on the application in Maine in July of this year. The Board has also made mediation available to the parties. I directed our top mediator and our Chief Economist to lead these efforts. This is a pending matter, so I cannot comment on the merits of the case. But I want to note how this case highlights my approach to regulation: open, transparent, and on a full and fair record.’ {text of prepared testimony via Journal of Commerce}

DOWNEAST SCENIC RAILROAD*
24 July, Ellsworth. **THE STATE’S NEWEST SCENIC RAILROAD BEGAN OPERATION**, by dint of the work of a dozen regular volunteers and the cash of 350 donors. By 7 August, it was running trips twice a day on Saturday and Sundays, starting in Ellsworth, running west to Ellsworth Falls, and then east to Washington Junction, and return.

The Junction holds a canvas-on-frame engine house for the (ex-Portland Terminal and CSRX) S-4 #1055 and (ex-Berlin Mills and BML) 70-tonner #54.

Still at the Junction: extensive yard tracks, remnants of the old turntable pit and enginehouse foundation, 500 feet of track toward Calais (the rest of the right-of-way has become a multi-use trail), and the memory of the line to the Mt. Desert Ferry in Hancock. {Ron Johnson in The 470 9.10; Bangor Daily News}
MASSACHUSETTS

STATE RAIL PLAN*

9 September, Boston. **MASSDOT RELEASED THE DRAFT STATE RAIL PLAN**, finally. The schedule:

**Rail Plan**
- September 9 - Public release of draft State Rail Plan
- September 16 - Public hearing for the Rail Plan from 4:00 to 6:00 pm at Union Station Intermodal Transportation Center, Union Hall (Second Floor), 2 Washington Square, Worcester, MA.
- September 24 - Comments on draft Rail Plan due
- September 30 - Release of Final Rail Plan

**Freight Plan**
- September 30 - Release of Final Freight Plan

The Massachusetts Rail Plan is available online at www.mass.gov/massdot/freightandrailplan.

MASSACHUSETTS FREIGHT PLAN*

10 September, Boston. **MASSDOT WILL NOT RELEASE THE FREIGHT PLAN IN DRAFT FORM** said Ned Codd, the department official overseeing the effort. The department and its consultants did do outreach:

Four public meetings were held at site around the state last spring: Holyoke, March 23 Boston, March 25, New Bedford, March 31, and Worcester, April 1

Study findings and recommendations were presented, and comments were solicited at the meetings, through the website, and via email.

The department will release the final freight plan on 30 September, the same date as the state rail plan, but the public has a chance to comment on the rail plan. {e-mails to ANR&P 10&13.Sept.10}

The state rail plan is part of the state freight plan. [See 09#12B.]

MBTA/CSXT: GRAND JUNCTION*

7 September, Cambridge. **SOME T TRAINS FROM WORCESTER SHOULD OPERATE INTO NORTH STATION**, proposed Lieutenant Governor Tim Murray. During a hi-rail trip on the Grand Junction with Transportation Secretary Jeffrey B. Mullan, MBTA general manager Richard A. Davey, and MBTA director of railroad operations Jody Ray, Murray remarked that the current terminus for Worcester trains, South Station, cannot accept more without expansion.

The Grand Junction offers a route to North Station, not now at capacity. Murray hopes to use it as early as 2012. “It’s about [creating] job and economic development opportunities, it’s about doing that in an environmentally friendly way, and about utilizing one of the assets that the Commonwealth possesses.”

**Cost**

T track workers were in the middle of a three-week, $530,000 track upgrade on the Grand Junction. [The state acquired the line in June—see 10#06B.]

[In an e-mail, MBTA spokesperson Joe Pesaturo wrote: ‘The work on the Grand Junction is designed to result in a solid FRA class 2 track condition. There is still some rail change-out work to perform over the next few months (and as time permits), but the track is now well above the marginal class 1.’ {e-mail to ANR&P 13.Sept.10}]

Before any Worcester trains run to North Station, about $1.6 million would also need to be invested in a year-long project to add gates to six road crossings in Cambridge, a project that has not yet been authorized, according
to Pesaturo. A commuter rail stop in Kendall, something else Murray envisions, would be much further off and require much greater investment. [Eric Moskowitz in Boston Globe 12.Sept.10]

**MBTA/ST: AGREEMENT?**

16 September, Boston. **THE LAWYERS ARE STILL REVIEWING THE DOCUMENT**, according to Joe Pesaturo, T spokesperson.

On 2 June, the T announced it had reached an agreement with Pan Am under which each side would not charge the other track fees. In addition, the T acquired the right to operate to the proposed Wachusett station and layover beyond Fitchburg. [See 10#06.]

**Affecting Wachusett?**

By 21 July, Pesaturo acknowledged the document was not executed. The T had not yet begun the extension to Wachusett: ‘The MBTA was authorized $55.5 million in TIGER funds for the Fitchburg Commuter Rail Extension and Wachusett Station. The...grant for Wachusett has not yet been awarded. The T can’t access federal funds until it is awarded (although in some cases, the work can begin.... and reimbursement occurs later).’ [e-mails to ANR&P 21.July.10 & 16.Sept.10]

**Affecting Plaistow**

[See New Hampshire.]

**CSXT/MASSDOT: BRIDGES**

9 September, Brookfield. **THE COMMONWEALTH BRIDGE-CLEARING PROJECT HIT PUBLIC RESISTANCE** here. State contractor Fay, Spofford & Thorndike told the town in June that it would close the Route 148 bridge for four weeks to increase clearance to 21 feet [see 10#02A].

Because the town center, with its emergency responders and school, is located north of the CSXT line, while residential development has occurred south of the line, some are concerned about the $4000 extra for school buses and the lack of emergency response.

Town Fire Chief Peter Martell has asked for a temporary grade crossing during the work, but has no response.

**No benefit to town?**

“We don’t have any extra money at all,” Rudy Heller, chair of the Selectboard, said. “We don’t think the town of Brookfield should be burdened by any costs, especially when the only beneficiary as we see it is CSX. They are not a public entity. They’re a private entity. They’re not a nonprofit. They’re a profit-making venture. And we believe if there are any costs to be incurred, they — who will benefit and recoup this — should be paying for it.” Chief Martell and Mr. Heller both agree Brookfield has nothing to gain from this project.

“In Worcester’s case, working with the railroad is probably easier because there is an economic benefit,” Chief Martell said. “This project doesn’t bring a single bit of job potential, excise tax, personal property, any benefit to us at all. Without any of the potential benefits, we carry all the potential risks.”

[Except of course, for the private, tax-paying facility in East Brookfield, the auto terminal. See 09#02A. Not to mention the goods which town residents use, moved by rail. Editor] [Craig Semon in Worcester Telegram & Gazette 10.Sept.10]

16 September, Westboro. **THE MASSDOT BRIDGE PROJECT HERE MAY PERMIT ONE-WAY TRAFFIC**, when workers raise the Milk Street bridge. Emergency responders applauded the possibility. Police Chief Alan Gordon said engineers brought that up as an option.

[Why Westborough and not Brookfield. Wealth? No. Westboro median income is $60,000; West Brookfield $59,500, according to real estate websites. Editor]

**Transload facility**

CSXT will move the Transflo operation from Beacon Park to the former auto terminal here. Gordon said he was concerned about the environmental impact.
CSXT has not submitted plans to the Board of Selectmen or the Planning Board yet. {Priyanka Dayal in Worcester Telegram and Gazette  16.Sep.10}

MC: CUSTOMER OFF RAIL?

16 September, Sagamore. **THE MIRANT CANAL POWER PLANT MAY STOP USING RAIL ENTIRELY.**

Paige Kane, spokesperson, wrote that New England’s electric system had not utilized the plant much. ‘The plant was called on about half a dozen times this summer when load demand was very high.’

The plant was receiving ammonia by rail [see 09#01A]: ‘We have not received NH3 by rail in some time and do not anticipate a delivery until late 2011 (if at all) based on the plant's run time. We also just released 2 out of 3 NH3 rail cars from our lease due to the reduced operating time of the plant.”

Ash down

[The plant was sending out its fly ash by rail to US Vanadium via the Gallo facility–see 02#07A, 03#03A.] ’Ash is still being disposed of by rail and I would guess that the last shipment went out in the July /August time frame. At some point we will be switching from rail to truck removal based on the reduced quantities. We also reduced our lease on the rail cars to a minimum during this period to reduce costs. {e-mail to ANR&P}

MCER: NIMBYS

13 September, Barre. **CREOSOTED RAILROAD TIES AGAIN AROUSED PUBLIC IRE.** In 2009, Carolina Pole initially located a tie depot on the GU [see 09#03B]; in response to complaints, Carolina moved the depot [09#08A] to Millbury on the PW [10#03B].

This time, Wildwood Reload on MCER has an MBTA contract to affix tie plates to creosoted ties and to deliver them by truck to various points on the system [see 0#06A].

On this day, the Town of Barre Board of Health meeting heard complaints about the fumes. Bob Bentley, MCER president, told the meeting the contract would end in February 2011. He said also that the company would move the location of the work.

Health Agent Stephanie Bacon said she had been in contact with DEP and was told that during the curing process, the emissions from the railroad ties did not exceed levels appropriate for the industrial zone in which Wildwood Reload is located.

Board Chair Dana Mascroft asked residents to meet the railroad halfway and give them the two weeks Bentley said it would take to transition the bracket and rebundling operation from South Barre Road to the location where new shipments of ties are already being offloaded. {Bradford Miner in Worcester Telegram and Gazette 14.Sept.10}

MCER: TINY RR INSISTENT*

2 September, DC. **ABC&D ARGUED THAT IT MET THE STB REQUIREMENTS TO BECOME A COMMON CARRIER,** contrary to the contentions of the Town of Ware. A summary of the case follows which does not follow the ABC&D filing, but uses quotes from it, with page references.

A summary of the case

1. ABC&D has had a permit to handle C&D, and rails some of it out. [See 06#05B.]

   ‘Under the circumstances, ABC&D is presently performing rail transportation with its existing equipment. To the extent it needs to move rail cars within its facility, it does so using a front loader and intends to continue doing so. In addition, it has recently leased 15 cars from American Rail Car Leasing.’

   ‘ABC&D will use these cars to move construction and demolition debris to a new disposal site. The transportation and other expenses in connection with this new disposal site are substantially less than the expenses in connection with the disposal site that ABC&D has used in the past. For this reason and for reasons relating to the unavailability of local disposal sites, ABC&D expects that a materially greater portion of its outbound loads will be
by rail.’ {footnote at page 12}

2. ABC&D was getting into financial trouble [10#08A], and has a buyer.

3. The company wants to add solid waste, and obtained permits from the state to do so. The Town of Ware denied ABC&D a permit. Moreover, the Town discovered that, in its interpretation, the initial permit was wrongly granted. [10#08A]

4. ABC&D decided to open a tiny RR so it could avoid some oversight. ‘ABC&D seeks to convert what is already essentially a railroad operation from an operation performed by a noncarrier to one performed by a carrier.\[page 8\]

   ‘[A]ny use of federal preemption by ABC&D would be for the purpose of interstate railroad transportation of solid waste. Circumventing a local permitting process for the purpose of providing rail transportation is entirely appropriate.’ \{page 9\}

5. The buyers of ABC&D will not follow through unless they can get the STB status as a railroad, and retain the current C&D permit. ‘The agreement for the purchase of the underlying real estate explicitly contemplates that a notice of exemption will be filed. It provides that buyer's obligation to purchase the premises is subject to and contingent upon approval from the Board to operate as a railroad.’ \{page 5\}

**Entitled to exemption so can become common carrier**

The Town appears to argue that ABC&D is seeking common carrier status solely to avoid local oversight (for ‘non-railroad purposes’), and has no intent of becoming a railroad. The Town notes that ABC&D serves only itself. ABC&D responded that the STB has granted common carrier status to operations which serve only themselves.

- ‘Upon becoming a common carrier it is ABC&D's intention to hold itself out to the general public to provide [transloading of C&D]. There are presently railroads which load construction and demolition debris into railroad cars on a common carrier basis. These railroads are no less common carriers because they may also process solid waste. \{page 12\}

- ‘When ABC&D becomes a common carrier railroad it will, as a legal matter, hold itself out to third parties generally to perform the rail transportation it is already performing. As a result, ABC&D will meet the test of common carriage - a holding out to provide the public with rail transportation. See New England Transrail, LLC, FD 34397 (June 29,2007).’ \{page 13\}

- ‘This is not analogous to a situation where a manufacturer seeks common carrier status for its plant trackage. In that situation, the trackage serves only the manufacturer. Here, by contrast, ABC&D is already a transloader serving multiple customers.’

- ‘Although simply becoming a common carrier will have no effect upon state and local regulation of ABC&D's existing or future solid waste operations, becoming a common carrier would enable ABC&D to seek a land-use-exemption permit [from the STB as described in case Ex Parte 684].\[4\]

   ‘In contrast, if ABC&D is precluded from becoming a common carrier it will have no ability to seek a land-use-exemption permit. Precluding ABC&D from seeking a land-use exemption is inconsistent with the policies that underlie the regulation of interstate commerce. Indeed, the Clean Railroads Act represents a recent and considered pronouncement by Congress as to the appropriate balance between federal and local regulation of facilities handling solid waste. That statute assigns to the Board responsibility (1) for determining whether a particular state or local

\[4\]If a state declines to grant the appropriate permits to a railroad which wants to operate a solid waste facility, the railroad may ask the STB for a land-use exemption permit. See 08#10B.
regulation affects the siting of a facility; and (2) for determining whether the facility poses an unreasonable risk to public health, safety or the environment at the location.

‘The Town is seeking to prevent and/or delay the Board from making the determinations assigned to it by the Clean Railroads Act. It is seeking to avoid a proceeding under Ex Parte 684. If ABC&D does not become a common carrier, there can be no proceeding under Ex Parte 684 and the Board will never be called upon to make the determinations committed to its discretion by the Clean Railroads Act.

‘If ABC&D does not become a common carrier, the balance between federal regulation and state or local regulation will be determined by default, without there ever being a presentation of the merits. {page 14} {STB website, filings page, Finance Docket # 35397}

**PVRR/PAS: HOLYOKE**

8 September, Westfield. *PAS AND PVRR ARE WORKING ON REOPENING THEIR INTERCHANGE*, said Mike Rennicke, PVRR general manager.

‘Brush has been cleared and work has been done to the PAS side of the interchange. PVRR will begin working to replace all of the timbers on the bridge over the canal this week. We still have some minor other work to accomplished on the line along South Water Street. We have contacted all of the businesses nearby to alert them that rail operations will return to this line.

**Interchange agreement**

‘We are also working with PAS on the interchange agreement and have identified traffic that could be handled over the interchange. As neither the agreement or repairs are complete we have yet to move any cars. We anticipate this to occur later this fall. Once activated this interchange will provide access to traffic originating on Pan Am Railways, PAS and Norfolk Southern. We are actively working with the Sales and Marketing people of these railroads to find new opportunities that would jointly benefit our businesses.’ {e-mail to ANR&P}

**PW: DOUBLE TRACK TO BARBERS*”**


**National Grid reply on 31 August**

The power company responded to PW’s request for an STB ruling [see 10#07B] that federal law pre-empts any attempt under state law to regulate PW’s use of its own right of way.

National Grid (NG) contended that ‘substantial factual and legal issues [exist] to consider in determining whether the state law in issue, designed to prevent the interruption of reliable electric service, unreasonably interferes with P&W's use of its property for railroad purposes.’

NG contends that ST owns some of the right of way, along with PW, and that its power lines are sited on ST as well as PW land.

NG reported that on 5 January it sent PW plans to relocate its line within PW’s right of way, which would permit construction of the second track. But PW proceeded to terminate NG’s license, which ‘surprised’ NG.

‘There is also a substantial question whether removal of the transmission line without the approval of the [Massachusetts Department of Public Utilities] is permissible under [the Federal Energy Regulatory Commission’s] oversight of regulation of the reliability of electricity transmission in the region. These are issues largely of first impression, which need to be explored before the Board can make a reasoned decision on the merits...’

NG asked the Board to institute a proceeding to take evidence and argument, with a five-month schedule.

**PW response**

In its 7 September filing, PW argued that no evidence is required, as the Board need only rule on the question of federal pre-emption. ‘Although National Grid asserts that there are "substantial fact questions" relating to whether M.G.L., c. 164, § 73 or the National Grid poles unreasonably interfere with or "regulate" P&W's operations, none
of those purported factual issues are relevant to whether the preclearance requirement of M.G.L., c. 164, § 73 is preempted.’

NG rejoinder
On 9 September, NG moved to strike much of PW’s response, because the response went to the heart of the issue. ‘While P&W is entitled to file a reply to National Grid's Motion for Protective Order, and to include a response as to whether it agrees with the procedural schedule proposed by National Grid, P&W's Reply goes much farther than this.

‘It responds substantively to the discussion in the National Grid Reply of the legal standards governing the Board's consideration of federal preemption issues of the kind raised by the Petition. It also responds substantively to the discussion in the National Grid Reply regarding the potential conflict between FERC oversight of electric grid reliability (which implicates the Massachusetts statute in issue) and the Board's jurisdiction over certain aspects of railroad operations. Thus, in the guise of replying to National Grid's Motion for Protective Order and commenting on the proposed procedural schedule, P&W has improperly attempted to submit a reply to the National Grid Reply.’

{STB website, filings page, FD 35393}

Who owns the right of way?
Unfortunately for enquiring minds, PW has not yet described, and may not describe, the ownership of the entire formerly double-tracked line between Worcester Union Station and the junction called Barbers or, as the ST Employee Timetable #2 calls it, ‘Barber’.

A view of the line via Google shows that much of a second track remains, out of service, not connected to the currently-used single track. Operating double track exists from Union Station to a point just north of Route 70, after the line emerges from the ‘tunnel’ it runs through from Union Station.

Sources agree that ST does own some of the right-of-way: that part starting in Barbers, holding the former second track, south to about the point of merger north of the tunnel. Sources also agree that CSXT succeeded to Conrail trackage rights over the entire 2.9 miles, enabling it to reach ST.

In addition, ST retains trackage rights over the line to Gardner just north of Barber’s, enabling it to serve the St.Gobain plant. The Bing website shows six railcars inside the massive plant. {ANR&P discussions 7-8.Sept.10; Bing and Google websites}

**ST: SAUGUS BRANCH***
31 August, DC. *ST FILED CONSUMMATION OF ABANDONMENT OF THE SAUGUS BRANCH*, letting go its freight rights. [See 10#07A.] {STB website, filings page, Docket No. AB 32 (Sub No. 71x)}

**ST: MORE ON NORTH POINT***
8 September, Somerville. *MAGIC JOHNSON WILL HELP FINISH B&M’S DEVELOPMENT NEAR THE GARDEN*, according to recent comments and a filing in Middlesex County Registry of Deeds.

In May, the MBTA announced it was locating a maintenance facility north of the North Point Development [see 10#05B which has a map]; the T still plans to re-locate the Lechmere Green Line station to serve the development.

In June, a court ruled that B&M must sell the property [see 10#06B]. In late August, B&M transferred the property to Canyon-Johnson Urban Funds for the price of $10, according to the Registry. CJUF, a Los Angeles-based joint venture between Canyon Capital Realty Advisors and an entity of Magic Johnson Enterprises, will partner with the HYM Investment Group to complete the project.

Pan Am Railways will remain an investment partner in the project. {Jim Adams in Banker and Tradesman 8.Sept.10}
<table>
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<tr>
<th>TIME</th>
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<tbody>
<tr>
<td>NOON</td>
<td>GOLF at Bayberry Hills</td>
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<tr>
<td>6:00 PM</td>
<td>NETWORKING RECEPTION</td>
</tr>
<tr>
<td>7:00 PM</td>
<td>DINNER AT THE RED JACKET (Part of Room Package)</td>
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**THURSDAY, Oct 7, 2010**

<table>
<thead>
<tr>
<th>TIME</th>
<th>EVENT</th>
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<tbody>
<tr>
<td>7:30 AM</td>
<td>REGISTRATION RE-OPENS</td>
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<tr>
<td>8:00 AM</td>
<td>PRESIDENT’S OPENING REMARKS Sr Supply Chain, Schneider Logistics – Pres NEARS DANA BURLEIGH</td>
</tr>
<tr>
<td>8:15 AM</td>
<td>EXECUTIVE DIRECTOR’S OPENING REMARKS</td>
</tr>
<tr>
<td>8:30 AM</td>
<td>REPORT FROM NARS WATCO Companies, Inc, - President NARS ALLAN ROACH</td>
</tr>
<tr>
<td>8:40 AM</td>
<td>WASHINGTON RAIL UPDATE</td>
</tr>
<tr>
<td>8:45 AM</td>
<td>CLASS 1 PANEL</td>
</tr>
<tr>
<td></td>
<td>Introduction: Account Manager – Norfolk Southern Corporation CHAD GRINNELL</td>
</tr>
<tr>
<td></td>
<td>Moderator; President R. Blanchard Company ROY BLANCHARD</td>
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<td></td>
<td>AVP Regional Development CSX Transportation CLARK ROBERTSON</td>
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<td></td>
<td>VP Corporate Marketing, Canadian National Railway DOUG MacDONALD</td>
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<td></td>
<td>Director of Sales, Industrial Products, Norfolk Southern Corporation TOM REESE</td>
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<tr>
<td></td>
<td>VP National Customer Service Center, Union Pacific Railroad LINDA BRANDI</td>
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<tr>
<td>10:15 AM</td>
<td>INTERMODAL PANEL</td>
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<tr>
<td></td>
<td>Introduction: Account Representative Pacer International ANN CARPENTER</td>
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<tr>
<td></td>
<td>Moderator Intermodal Marketing Mgr Norfolk Southern Corp KIMBERLY DUGAN</td>
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<td></td>
<td>Director of Marketing, CSX Intermodal MICHAEL RUTHERFORD</td>
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<td></td>
<td>Director Market Development, TTX Company JOHN S. WOODCOCK</td>
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<td>Director of Transportation, Solo Cup Company PHIL BAYLE</td>
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<tr>
<td>12:00 NOON</td>
<td>LUNCH</td>
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<tr>
<td>12:30 PM</td>
<td>LUNCH KEYNOTE SPEAKER Intro Sr. Supply Chain Manager, Schneider Logistics DANA BURLEIGH</td>
</tr>
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<td></td>
<td>Section Chief – Rail Customer and Public Assistance Programs STB THOMAS J. BRUGMAN</td>
</tr>
<tr>
<td>1:30 P.M.</td>
<td>SHIPPERS , UP TO THE CHALLENGE Introduction: Manager Sales – Industrial Products – BNSF Railway JACK RUDNICKI</td>
</tr>
<tr>
<td></td>
<td>Director of Purchasing , Quality and Logistics –American Biomass MICHAEL SCANLON</td>
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<tr>
<td></td>
<td>Logistics Director, Transportation – Diageo Global Supply SIMON WOOTEN</td>
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<tr>
<td></td>
<td>Vice President Sales &amp; Marketing, Valley Distribution JOHN MEYERS</td>
</tr>
<tr>
<td></td>
<td>Manager Chamber of Commerce , Williamsport/Lycoming, PA JASON FINK</td>
</tr>
<tr>
<td>2:30 P.M.</td>
<td>TRENDS IN RAIL TRANSPORTATION, A SHIPPERS PERSPECTIVE.</td>
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<tr>
<td></td>
<td>Introduction: Executive Director Northeast Association of Rail Shippers JOE GEARIN</td>
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<tr>
<td></td>
<td>Moderator/Presenter Vice President Sales, REZ – 1 JEFFREY BRASHARES</td>
</tr>
<tr>
<td></td>
<td>Manager, Carrier Relations Owens Corning WAYNE JOHNSON</td>
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<td></td>
<td>President, Sea2Sky Logistics ANDREW SPEARS</td>
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<tr>
<td></td>
<td>Manager, Rail / International Transportation, Miller / Coors GREG FRIEDE</td>
</tr>
<tr>
<td>3:40 PM</td>
<td>WHAT’S AVAILABLE IN CROMWELL, CT ? TAMMY STRONG</td>
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<tr>
<td>3:45 PM</td>
<td>NETWORKING PROGRAM</td>
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<td>NETWORKING RECEPTION</td>
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<tr>
<td>7:00 PM</td>
<td>DINNER AT THE RED JACKET (Part of Room Package)</td>
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**FRIDAY, Oct 8, 2010**

<table>
<thead>
<tr>
<th>TIME</th>
<th>EVENT</th>
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<tbody>
<tr>
<td>8:30 AM</td>
<td>PRESIDENT’S OPENING REMARKS AND ANNOUNCEMENTS DANA BURLEIGH</td>
</tr>
<tr>
<td>8:45 A.M.</td>
<td>WORCESTER AND RAIL UPDATE</td>
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<tr>
<td></td>
<td>Introduction Senior Account Manager - CSX Transportation BRIAN DOWD</td>
</tr>
<tr>
<td></td>
<td>Resident VP State Government &amp; Local Affairs CSX Transportation MAURICE O’CONNELL</td>
</tr>
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<td></td>
<td>Counsel – Massachusetts Department of Transportation JAMEY TESLER</td>
</tr>
<tr>
<td>9:15 AM</td>
<td>FINANCIAL UPDATE</td>
</tr>
<tr>
<td></td>
<td>Introduction Sr. Supply Chain Manager ,Schneider Logistics &amp; NEARS President DANA BURLEIGH</td>
</tr>
<tr>
<td></td>
<td>President ABH Consulting TONY HATCH</td>
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<td>Director - Dahlman Rose &amp; Company JASON SEIDL</td>
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<tr>
<td>10:15 AM</td>
<td>LOCAL SHORT LINE PANEL</td>
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<tr>
<td></td>
<td>Introduction: Manager Sales – Industrial Products JACK RUDNICKI</td>
</tr>
<tr>
<td></td>
<td>President, Mass Coastal Railroad JOHN KENNEDY</td>
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<tr>
<td></td>
<td>General Manager - Fore River Transportation PAUL RUSCIO</td>
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<td></td>
<td>Vice President – Marketing Vermont Rail System E FITZGERAL</td>
</tr>
<tr>
<td>11:30 A.M.</td>
<td>CLOSING REMARKS /ATTENDEE FEEDBACK / $ 250.00 DRAWING</td>
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<tr>
<td></td>
<td>JOE GEARIN</td>
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</tbody>
</table>
NEW HAMPSHIRE

NHDOT: STATE RAIL PLAN*
30 August, Concord. NHDOT EXPECTS TO SIGN AN AGREEMENT WITH HDR TO DO THE STATE RAIL PLAN in October, said rail administrator Kit Morgan. {ANR&P discussion}

In May, NHDOT announced the selection of HDR [see 10#05B]. In August 2009, NHDOT said it wanted to do the update during ‘this fiscal year’ [see 09#08A].

MBRX/ETHICS: FINK LOSES AGAIN
10 September, Concord. DAVID FINK’S CLAIM AGAINST THE ETHICS COMMITTEE IS NOT ‘JUSTICIABLE’, ruled the State Superior Court this day. Fink, the president of Pan Am Systems, wrote to Governor Lynch about the NHDOT renewal of the MBRX lease. Fink senior stated: ‘The Citizens Legislature is no longer acting solely in the best interests of the citizens of New Hampshire....This conduct is quickly eroding the transparency and integrity that is required of all public officials....’ [09#07B.]

The General Court investigated Fink’s accusations of improper influence. After the Ethics Committee only issued Leishman a letter of caution, ST counsel Rob Culliford warned of an appeal of the decision in court [see 10#02A]. The action, filed by Pan Am subsidiaries ST and B&M, followed in April [see 10#04A].

The Ethics Committee argued the claims were non-justiciable, and the court agreed. ‘The justiciability doctrine prevents judicial violation of the separation of powers by limiting judicial review of certain matters that lie within the province of the other two branches of government.’ {Case 10-E-079}

In a press release, the Ethics Committee stated: ‘The Court adopted the position put forth on the Committee's behalf by the NH Attorney-General's office, that where there is no violation of constitutional rights, proper enforcement of legislative rules, including disciplinary rules, is exclusively a matter for the legislature, rather than the courts. The Court also ruled that the way the Committee proceeded didn't amount to a violation of Part 1, Article 8 of the NH Constitution, which protects public access to governmental proceedings.’ {text of press release}

ST: CONCORD SERVICE
15 September, Concord. HOW IS ST FULFILLING ITS COMMITMENT TO SERVE CONCORD? The STB noted in its decision granting ST adverse abandonment of the NEGS service:

‘To this end, Pan Am states that: (1) it will operate one crew on a 5-day-a-week basis; (2) the crew will be headquartered in Concord, where approximately 1,700 cars were interchanged with NEGS in 2006; (3) it will serve customers between Concord and Manchester as well as remaining customers in Manchester; (4) the crew’s workday will be coordinated around customer needs; and (5) it will coordinate inbound and outbound traffic with main line trains to provide seamless movement of traffic from connections to customers.’

Somewhat short: coal trains count?
Despite its commitment, through the first two weeks of serving customers in Concord, ST had made three trips to Concord. It did not base a crew in Concord.

Reportedly, ST has said that it counts the Bow coal trains as part of the five days a week.
From 1 September to 15 September, according to rail observers, PWBO (the coal from Provport delivered using PW locomotives) reached Bow on 4, 10, and 15 September.
NS coal trains bringing coal from domestic points use NS power. These arrived on 1 and 13 September. {reports from e-lists}

Thus including the five coal trains, ST served customers on 8 days of the possible ten. The coal trains did not serve any other customers. Nor were all trains operated by ‘one crew’. {editor}
Blue Seal positive
On 9 September, Bill Whitney, transportation manager for Blue Seal, which has a facility in Bow, said “so far so good. They’ve done several runs up. The trainmaster has been real conscientious.

“I’m not sure where the crew is based, they call it the New Hampshire crew. They try to do it with NA-1, the Nashua crew, to come right on up to Concord.

“There are not enough cars moving through to get a solid feel yet.”

Asked about the Blue Seal Augusta facility service, he said, “Not bad, reasonably consistent, cooperative. As usual, they have the opportunity to have cars stuck in several spots.

“I’m glad the track construction season is over.” {ANR&P discussion}

NHDOT: TIGER II COMMUTER RAIL

23 August, DC. NHDOT APPLIED FOR $30 MILLION TO EXTEND COMMUTER RAIL TO PLAISTOW from its current terminus in Haverhill, Massachusetts. Total cost, $29.5 million, of which 65% would come from the TIGER II program, 13% from federal CMAQ funds, and 22% from the MBTA. The project includes a depot in Plaistow and a layover facility.

Relationship to ST

The project was stalled in 2005. In 2000 or earlier, ST wanted the main line double tracked to Dover because of congestion [see 00#11]. The T and ST were able to make progress this year because of the broad track fee agreement, which encompassed the extension to Plaistow [see 10#06B]:

‘NHDOT respectfully requests an exception to the TIGER II requirement that the NEPA process be ‘Substantially Complete’ at the time of application submittal, based on the criteria set forth in Section II(B)(1)(b)(ii) of the Notice of Funding Availability (NOFA). NEPA review is in its early stages because the trackage rights agreement between the MBTA and Pan Am Railways, which is allowing this project to move forward, was only negotiated in the spring of 2010.’ {page 22}

The application could not trumpet an completed agreement with the host railroad, because the agreement is not yet executed [see Massachusetts]. {ANR&P discussion 16.Sept.10}

NHDOT: COMMUTER RAIL II

15 September, Concord. NHDOT AWAITS A DECISION ON ITS PLANNING GRANT. In May, under the High-Speed Rail Intercity Passenger Rail program, NHDOT applied for $2.8 million in planning funds, of which the state would contribute $560,000 from bond funds.

The funds will cover planning commuter rail service from Boston to Concord, the ‘Capitol Corridor’. {NHDOT Rail division website, click on ‘PROJECTS’}

Ignoring the elephant in the room?
In 2009, ST’s honcho Dave Fink senior declined to cooperate with the state in filing a grant for high-speed rail monies. This meant the state applied for no actual construction funds. [See 10#01B.]

Asked whether any reference existed in the planning application to this ST policy, NHDOT’s rail administrator, Kit Morgan, responded: ‘We believe the application is complete and addresses the program requirements.’ {e-mail to ANR&P 16.Sept.10}

NHDOT/NHN: TIGER II

23 August, Concord. NHDOT IS SEEKING $2.2 MILLION FOR A TRACK UPGRADE for the Ossipee-Dover line:

$1,869,408 – Federal Tiger II Grant (80%)
$367,352 – New Hampshire Northcoast (20%)
Reason: 286
As stated in the application for the TIGER II funds submitted to the FRA this day: ‘The work involves upgrades and improvements to existing track structure to bring it to a state of good repair. The replacement of ties, the reballasting and resurfacing, and other improvements to the 42 miles of line will allow the track infrastructure to handle 286,000 pound rail cars and to meet the current and, when the economy improves, the increased demand of NHN’s current and potential new customers.

Connection to state-owned line
In addition, workers would repair a 75 foot-wide, 15-year old washout north of the NHN engine house on the unused portion of the line that directly connects to the rail line owned by the State of New Hampshire, and some track north of the washout.

New traffic
The application stated that NHN currently does 4,000 carloads a year, 500 of those for Eastern Propane in Rochester.

‘With the proposed improvements the railroad will be able to return to its average volume of 6,500 to 7,500 cars a year and have the capability to double that volume. The repair of the washout is a necessary precursor for any potential of rail service to the North Country via the line owned by the State of New Hampshire that immediately abuts the New Hampshire Northcoast line.’

Also, creating usable track north of the washout will give access to an existing rail dock for either public or private delivery and open up a large parcel of land to rail access.

Shipper support letters
Denis Gagne, vice-president of wholesale for Eastern Propane, wrote that he receives 450 to 600 cars per year per year from Selkirk, Canada, and the Midwest. He also receives by truck from Newington (marine delivery) and Selkirk (pipeline delivery).

Richard Sampson, director of operations for Ossipee Aggregate, wrote that over the last ten years the company averaged 6000 carloads per year to Boston, and 1500-2000 per year to its terminal in Rochester.

Rail costs $2.06/ton to Boston, truck $3.50 to $4/ton. {text of application and letters at NHDOT Rail and Transit page, click on ‘PROJECTS’}

NHDOT/SLR: TIGER II
23 August, Concord. NHDOT IS SEEKING $10 MILLION FOR A TRACK UPGRADE for the remainder of the SLR line. As stated in the application for the TIGER II funds submitted to the FRA this day:

‘The rail upgrades proposed in this application will replace 20.6 miles of rail with continuous welded, control-cooled rail that allows for larger-size 286,000 pound rail cars thus completing a rail corridor project that began a decade ago...

‘In the early 1990s, the SLR began replacing obsolete non-control cooled rail on its main line running from Portland, Maine through southern Maine, the North Country of New Hampshire, and the Northeast Kingdom of Vermont to the Vermont - Quebec border through a combination of private investment and state and federal grants.

‘The Departments of Transportation in New Hampshire, Vermont, and Maine have worked closely with the railroad since that time to continue the momentum. The main line rail in the State of Maine has already been replaced, and all but three miles of the rail have been replaced in Vermont [see 10#08A]. This project would complete the collaborative effort of the states and railroad to improve the corridor by replacing the remaining 20.6 miles of old rail in Coos County, New Hampshire, and Essex and Orleans Counties, Vermont.’

TIGER II would supply $8 million; the SLR would provide $2 million.

Traffic: another Safe Handling in New Hampshire?
‘The analysis conducted for this application estimates that this upgrade is likely to lead to 8,538 additional annual carloads (649,059 tons) and a cumulative shipper cost savings of $46.7 million due to the lower per ton mile shipping
costs of rail compared to truck...

‘SLR has a large operation outside of Auburn, Maine, [Safe Handling - editor] that provides transloading and other services, and there is private sector interest in developing a similar type of operation for a transloading facility in Coos County, New Hampshire if and when this corridor project is completed.

Shipper support letters

Harold Bumby, president of The Maine Wood Treaters in Mechanic Falls, Maine wrote: ‘As the only wood treatment company in Northern New England we are quite dependent upon the SLR and their services which provide to us a transportation link with all of the Southern Pine sawmills across the South from Florida to Texas and to Arkansas.

‘We consider the SLR to be the “best little railroad in New England”, and their connection with the CN is a huge plus, but like all things there has been one blemish.

‘For the past fifteen years since we began buying Southern Pine and shipping via rail, our many vendors have had difficulty meeting the weight restrictions of the original track design of the SLR. I can't tell you how often I've received calls from the CN about overweight cars which needed some product to be offloaded before the shipment could continue.

‘This cost my suppliers time and money and lowered the volume shipped per car which lowered our efficiencies and increased our costs. Due to this I've probably been a real pain to the SLR having asked them repeatedly over the years to remedy this and improve their track to handle 286,000-pound rail shipments like everywhere else.

‘Now I understand that the final step to resolving this issue is a TIGER II grant request by the New Hampshire DOT for the replacement of the final 20 miles of the out-of-date trackage in New Hampshire and Vermont. It would be a huge improvement to all of us if this project could receive your support. Please, and thank you.‘

Other letters. More generic letters came from NEPW Logistics, Fore River Warehouse, Isaacson Steel, and RCP Transit. {text of application and letters at NHDOT Rail and Transit page, click on ‘PROJECTS’}

ST: LOSS OF ANOTHER CUSTOMER*

8 September, Nashua. Rexam is closing its packaging plant here as planned, said MBRX owner Peter Leishman. As he did for Law Warehouse [see 10#08A], Leishman helped maintain the former Owens-Illinois plant’s spur. He ranked the railroad’s traffic as second-highest after Law’s.

ST will have left only two customers on the Hillsborough branch, each getting only one or two carloads a week: Harcros Chemicals, and Hendrix Cable.

Leishman reported that Hendrix did receive a switch this week. {ANR&P discussion}

Closing announced a year ago


PORTSMOUTH: TIGER II

23 August, DC. PEASE DEVELOPMENT AUTHORITY AND NHDOT FILED FOR $14 MILLION in TIGER II Grant funds for a 29,000SF expansion of the main wharf, replacing the current wharf access bridges by decking the area between the existing shoreline sheeting and the wharf.

Traffic

‘The Market Street Marine Terminal handled 271,238 tons of bulk cargo (148,300 tons of scrap metal for Grimmel Industries and 122,938 tons of highway deicing salt for International Salt) and over 50,000 tons of ‘machinery in 2009....

‘The Market Street Marine Terminal also provides marine support service to vessels that carry approximately 5 million tons of cargo in and out of the harbor annually. Much of the tonnage not handled by the terminal was associated with upstream businesses that rely heavily on the proper functioning of the wharf and bridges.
Total cargo traffic for port

‘In 2009, a total of 215 individual transport vessels entered the harbor with many stopping at the Market Street Marine Terminal.’ Other terminals: PSNH Power Plants, SEA-3 (LPG terminal), Georgia Pacific, EL Power Plant, United Industrial, Westinghouse Electric, International Salt, Tyco, and Grimmel Industries.’

The application, as posted on the website, included no letters of support from shippers.

It added that NHDOT’s first application, turned down by the federal government in February, sought funds not only for the terminal, but for two bridges across the Piscataqua in addition. This second application dropped the bridges; the state applied for one bridge separately. {text of application on NHDOT website, Recovery page}

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**RHODE ISLAND**

SEAVIEW/PW: NORAD EXCELLENT*

8 September, Davisville. *MORE DETAILS ON THE AUTO TRAFFIC* for the North Atlantic Distribution facility here came from Mike Miranda, president.

**Inspection and training**

Miranda said that for the Ford move [see 10#08A], officials came to train his workers, and to survey the facility. He was told that it was “the only one they’d ever seen which could get all 100s” in the survey.

Officials will return this month “to do an audit. We’ve already corrected” some of the problems the first survey found.

[Bruce Hamilton, principal of Seaview Railroad, added: ‘The AAR does the audits and did the training session, which I attended. It was interesting and they are very thorough, checking on things you wouldn't expect.

‘I would say that anyone who gets 100% has an extremely good operation. The average seems to be in the 90s. (The worst score was earned by a yard in Mexico.) I read recently that (if I remember right) an NS yard in Florida achieved the only 100% score. The AAR instructor said Davisville could do it.’ {e-mail to ANR&P 9.Sept.10}

**Why did Porsche move from Baltimore?**

Miranda said that Porsche officials, whom he had pursued for several years, “liked the facility better. It’s larger, cleaner, the buildings are nicer.”

In addition, Davisville is not charged the harbor maintenance fee, because it does not use federal dollars for dredging [see 09#01A and below].

**Business booming**

With the revival of the auto business, said Miranda, his facility is thriving. Whereas earlier he had 18,000 vehicles on the ground, now they move out so quickly he has more space. Nationally, VW-Audi is up 35%, Nissan 30-35%, Subaru 40%. “The only one not up is Toyota.”

This year he anticipates moving 130,000 Volkswagens and Audis, 40,000 Subarus, and 10-15,000 Porsches. [Plus the 25,000 Fords under the new contract–see 10#08A]. NORAD is the only importer of VW-Audi on the East coast.

Moreover, unlike facilities in residential areas such as San-Vel and East Brookfield, NORAD is not constrained by neighbors’ complaints about trucks and operating noise. “We operate 24x7.”

He still has room to expand, and is pursuing more traffic, such as Ford, GM, or Chrysler exports. In addition to the current 170 acres, he anticipates expanding into 35 additional acres next year.

**Still no outbound rail**

All vehicles move outbound by truck, even to destinations in the Chicago area and beyond Virginia, Miranda
reported. Receivers don’t use rail because “the trucking rates are very good,” and because they don’t have railheads. 

Most vehicles move in open auto carriers, but Porsche and Audi R8s [a Corvette-like car—editor] move in completely closed carriers. Porsche has a dedicated trucking company. {ANR&P discussion 8.Sept.10}

**QUONSET: HMT**

10 September. **THE PORT STILL PLANS TO DREDGE WITHOUT FEDERAL FUNDS**, so it can avoid the Harbor Maintenance Tax [see 09#01A], said Port Director Evan Matthews. “We’re in the process of getting the dredging of permitted,” through the Rhode Island Coastal Resources Management Council, which works in coordination with and on behalf of the US Army Corps of Engineers.

**Depth**
The effort will begin with dredging along the pier to at least 30 feet. Further into the future, the port would like to dredge the entire basin to 30 feet to match the channel depth, but needs to dispose of 50,000 cubic yards of material to do so.

If it did the entire basin and channel to 35 feet, that would result in a million cubic yards of material.

**Advantage**
At 35 feet, the port could attract true ro-ro vessels, and move into break-bulk. He cautioned, “We’re not after containers ships” in a direct call, but the port could link to larger ports via feeders.

That’s not now feasible: “Trucking rates out of New York are so low.”

But the port will not subsidize a container barge service. “We’ll do it at market rates.”

**Traffic**
The port is “well above last year” in terms of year over year gain, Matthews said. {ANR&P discussion}

In May, NORAD had 273 inbound autoracks, and 10 auto carrier calls with a total of 9,518 units. {Quonset Development Commission board meeting minutes, 21.June.10}

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**VERMONT**

**NECR: FED DOLLARS NOW?**

15 September, DC. **USDOT ANNOUNCED NECR HAD A HOST RAILROAD AGREEMENT**, during a hearing of the Senate Commerce Committee on the future of the national rail system. US DOT Assistant Secretary Porcari said:

‘This summer, we experienced a pause in all State negotiations of stakeholder agreements as the freight railroads absorbed the meaning of their obligations where public funds improved their infrastructure or other assets. I am happy to report that in recent weeks we have seen stakeholder agreements that meet our bottom line principles reached between the Northern New England Passenger Rail Authority and Pan Am Railways for improvements between Portland and Brunswick, ME; between Vermont and the New England Central Railroad (NECR) subsidiary of Rail America for improvements to the rail line between Brattleboro and St. Albans, VT; and between Washington State and the Burlington Northern Santa Fe Railway (BNSF) for improvements between Seattle, WA and Portland, OR.

Under the High-Speed Rail grant, Vermont will obtain $50 million. [See 10#07B.]
QUEBEC/MARITIMES

SYDNEY: PLANNING MONEY*

10.September. THE NOVA SCOTIA GOVERNMENT HAS ADVANCED $300,000 TO THE SYDNEY MARINE GROUP TO DEVELOP A DETAILED DESIGN for the Sydney harbor dredging project. {Nova Scotia government release 3.September.10} The money is part of the $15.2 million the province has committed to the $38 million project contingent on the federal government contributing $19 million. The federal government has made no decision on financial assistance. [See 10#06A.]

Money buys time
“The announcement from the province is helpful because it allows us to start work on a critical path right now and effectively buys us a certain small period of additional time to try and pull the balance of the financing together to actually award the contract this year. That is still our objective,” said Jim Wooder, chair of the SMG.

Boskalis to do design
SMG wants to dredge approximately five miles of the channel at the harbor entrance to a depth of approximately 55 feet to allow for deep draft vessels. The dredging is also key to the development of a major container terminal at Sydport, on the west side of the harbor and other potential marine businesses.

Boskalis International of the Netherlands, the favored bidder on the project, will do the design, said Wooder. “We put a conceptual design into the project’s RFP and the contractors, including Boskalis, came back with some alternatives. The detailed design was part of the overall contract package,” Wooder said. “Certainly there are parameters [which] we set, like the footprint of the dredged materials and things like that, but these guys are the experts.”

Talks with feds
“The people close to this file continue to speak in hopeful terms about the willingness of the federal government to fund it. I take my counsel from them,” Wooder said. “Sydney Marine Group is not in direct conversations with federal government about funding this project. There are lines of communication open and we are here to respond to questions. We believe that representations are being made to the appropriate levels of government and we are satisfied (with that). There are lots of people talking about this.” {In discussions with ANR&P’s Tom Peters 9.September.10}

Province active
Deputy Premier Frank Corbett, legislative member for Cape Breton Centre, said: “We continue to keep in touch with Ottawa in telling them it is still top of mind. There are rumors that the prime minister will be coming to the area in a month or so and hopefully that will bold well for this project.”

The deputy premier said “you’ve got to be optimistic” and his gut feeling is the federal government will see this as worthwhile project. But having the harbor dredged doesn’t automatically mean people will line up to do business. “But we understand it allows us to be in the ball park for business. It is up to business people to decide to do their due diligence and go forward and attract business.” {In discussions with ANR&P’s Tom Peters 10.September.10}

RAIL SHIPPERS

Described in this issue.
Our Directory of Rail Freight Facilities in New England has more information on the companies denoted with their directory number.
Blue Seal (ST, Maine) Service reasonable.
Blue Seal (ST, New Hampshire) Concord service start.
Maine Wood Treaters (SLR, Maine) Effusive about SLR.
Mirant (MC, Massachusetts) Stops rail of ash and ammonia.
NORAD (PW-Seaview, Rhode Island) Excellent for autos.
Ossipee Aggregate (NHN, New Hampshire) Track help.
EDITORIAL

POLITICAL INFLUENCE

David Fink senior has railed against Leishman and politics in New Hampshire: ‘The Citizens Legislature is no longer acting solely in the best interests of the citizens of New Hampshire....This conduct is quickly eroding the transparency and integrity that is required of all public officials....’ [09#07B.]

Cynics might ask what Mr. Fink expects in return for his sizeable donations to candidates for elected office in New Hampshire. In 2010 alone, Mr. Fink has made the following donations: $1000 to Republican candidate for governor John Stephens (Fink listing himself as ‘retired’); $500 to Republican candidate for US House Richard Ashooh; and $1000 to Republican candidate for US Senate Bill Binnie. {federal elections websites; NH secretary of state}

Results: Stephens won; Ashooh lost; Binnie finished third. {websites}
Purpose

*Atlantic Northeast Rails & Ports*, née *Maine RailWatch* (1994-1997) and later *Atlantic RailWatch* (1998-1999), is dedicated to the preservation and extension of the regional rail network. The editor believes that publishing news on railroads and ports spotlights needed action to preserve the rail network. The publication also imbues the region with a sense of an interdependent community, employing the network to move rail and port traffic. ‘No railroad is an island, entire onto itself.’