Formal issue 12#02B 5 March 2012

*Article unchanged from e-bulletin.
**Blue type in article: changes from e-bulletin.
Blue header & table of contents: new article

REGIONAL

[No report.]

NEW YORK

[No report.]

QUÉBEC

[No report.]

CONNECTICUT

[No report.]

MAINE

Legislature/Railroads: 3 rail bond bills.*
Legislature/Searsport: $200 million bond.*
EMRY: Changes lessors on 146 boxcars.*
MMA-NBSR: notice on Madawaska branch. Gets MMA overhead rights. Map.**

SEARSPORT – MAJOR PROPANE REPORT

MASSACHUSETTS

CSXT: North Brookfield Railroad reviver Dan Bigda sees summer opening. STB questions.**
ETC v Cape Rail: Cape Rail arguments in favor of dismissing Michigan case for lack of jurisdiction.*
ETC v Cape Rail: ETC arguments showing that the Michigan court has jurisdiction.*
MC: Flour move to Fall River plant update.*
MC: Ammonia move to Sandwich plant update.*
PAS: Largest delinquent taxpayer in Ayer.*

NEW HAMPSHIRE

ST-NHDOT: Commuter rail to 'unfunded' status.*

RHODE ISLAND

PW: Would serve customers past Fall River.**

VERMONT

VRS: No LNG by rail for Omya; no cars.

MARITIMES

[No report.]

RAIL SHIPPERS/RECEIVERS

A cross-reference to companies mentioned here.

PEOPLE, POSITIONS, EVENTS

Guest editorial: Don't revive Mountain Division.

Maine and propane
An overview of propane logistics in Maine fills more than half of this issue.
Reportage on the Mountain Division comes in addition.
Let me know if 'exhaustive' articles such as today's on propane or earlier issues this year on Albany are too much, too little, or just right.

- Chop Hardenbergh

- next formal issue: 19 March

FROM THE PUBLISHER

Common abbreviation
MAINE

EMRY: CHANGE IN LESSOR*
16 February, DC. **EMRY NOTED IT WAS LEASING 146 BOXCARS FROM MITSUI RAIL CAPITAL**, under a lease dated 1 October 2011, signed by Mitsui and J.D. Irving in December 2011, and recorded this day.

The cars are 2005 Greenbrier-built SO’ Plate F Boxcars with single 12-foot plug doors, 286 GRL. They all carry reporting marks “AOK” [Arkansas-Oklahoma Railroad]. {STB website, Recordations page, Recordation #30087}

Ian Simpson, NBRS general manager, explained that the railroad had changed lessors, and the new lessor, Mitsui, requested the recordation. {e-mail to ANR&P 21.Feb.12}

MMA-NBSR: NEXT STEP IN SALE
16 February, DC. **EMRY FILED A NOTICE OF EXEMPTION AT THE SURFACE TRANSPORTATION BOARD**, to acquire the Madawaska line [see 12#01B].

'The Line is posted by its current owner, the Maine, Montreal & Atlantic Railway, Ltd. ("MMA"), as Milepost 260 to Milepost 264.13 of the Madawaska Subdivision and Milepost 0.0 to Milepost 23.69 of the Van Buren Subdivision (the "Line"), and also includes the Van Buren bridge and 0.93 miles of track connecting to the CN line near St. Leonard, NB.1 Based on projected revenues for the Line, EMR expects to remain a Class III carrier
after consummation of the acquisition described herein.'

Other railroads

**MNRC.** The Maine Northern Railway Company ("MNRC") currently has overhead trackage rights over the Line. Maine Northern Railway Company - Trackage Rights Exemption - Montreal, Maine & Atlantic Railway Ltd., STB Docket No. 35518 (served June 3, 2011). EMR is acquiring the Line subject to these overhead trackage rights. Thus, MNRC's overhead trackage rights will remain unchanged by EMR's acquisition of the Line.'

**CN.** CN currently has limited trackage rights over a portion of the Line. Canadian National Railway Company - Trackage Rights Exemption - Bangor and Aroostook Railroad Company and Van Buren Bridge Company, STB Docket No. 34014 (served March 21, 2001); and Waterloo Railroad Company - Acquisition Exemption - Bangor and Aroostook Railroad Company and Van Buren Bridge Company, STB Docket No. 34015 (served March 21, 2001). EMR is acquiring the Line subject to these limited rights.'

**EMR obtains from MNRC overhead trackage rights of MMA.**

'As part of this transaction, EMR is acquiring, via assignment, overhead trackage rights from MMA. EMR is separately filing on this day a Notice of Exemption under 49 CFR § 1180.2(d)(7) regarding the assignment of these overhead trackage rights in STB Docket No. 35598, Eastern Maine Railroad Company - Assignment of Trackage Rights Exemption - Montreal, Maine & Atlantic Railway, Ltd. and Maine Northern Railway Company.'

'These overhead trackage rights are over a rail line owned by the State of Maine and extending from Milepost 260 near Madawaska, ME to Milepost 109 near Millinocket, ME. Montreal, Maine & Atlantic Railway Ltd. - Trackage Rights Exemption - Maine Northern Railway Company, STB Docket No. 35505 (served May 27, 2011).

'The State of Maine rail line is currently leased and operated by MNRC, a transaction approved by the Board in Maine Northern Railway Company - Modified Rail Certificate - In Aroostook and Penobscot Counties ME, STB Docket No. 35521 (served June 15, 2011). EMR and MNRC are corporate affiliates and currently have the ability to interchange traffic at Brownville Junction, ME. The corporate affiliate relationship was previously approved by the Board. The New Brunswick Railroad Company - Continuance in Control Exemption - Maine Northern Railway Company, STB Docket No. 35520 (served June 3, 2011 and Sept. 26, 2011).

'After the acquisition of the Line in this docket and assignment of trackage rights from MMA in STB Docket No. 35598, EMR will also be able to interchange with MNRC at Milepost 260 near Madawaska, ME and Milepost 109 near Millinocket, ME.'

Schedule

The filing estimated the Agreement by which EMRY will acquire the line will be executed by 19 March. {STB website, filings page, Finance Docket No. 35588}

**EMR revenue more than $5 million**

'Because EMR’s projected annual revenues will exceed $5 million, EMR certified to the Board on January 17, 2012, that it had complied with the requirements of 49 C.F.R. § 1150.32(e) by providing notice to employees and their labor unions on the affected 28.75 miles of rail line. Under 49 C.F.R. § 1150.32(e), this exemption cannot become effective until 60 days after the date notice was provided, which would be March 17, 2012.'

{STB website, decisions page, Decision 2.Mar.12 in Finance Docket No. 35588}
MAINE LEGISLATURE: RAIL BILLS*

24 February, Augusta. THE APPROPRIATIONS COMMITTEE HEARD TESTIMONY ON THREE 'EMERGENCY' RAIL FUNDING BILLS. In this, the second session of the Legislature elected in 2010, the solons are in theory entertaining only bills of an urgent nature which are deemed worthy of hearing in this shorter session. Each bill would set up a vote by Maine citizens to approve a general fund bond issue.

Mountain Division

LD 63, "An Act To Authorize a General Fund Bond Issue To Repair the Mountain Division Rail Line," would borrow $21 million to further rehabilitate the state-owned line between Windham and Fryeburg [see 11#04B].

The proponents (no opponents appeared at the hearing) again recited the benefits they saw from a revived rail line: job creation, industrial development, highway traffic diversion, real estate enhancement, commuter potential, and interstate connections. Senator Bill Diamond (D, Windham), credited with including the $4-million line item to restore five miles of missing track in the 2010 transportation bond issue to "send a signal [see 10#12A]," told the panel that "many businesses" are awaiting reactivation of the Mountain Division line and described the situation as a "success waiting to happen."

Proposed shipper: current mill has closed. Tony Wood, the only potential user to testify, represented his 140-year-old, family-owned forest products business, F.E.Wood and Sons. He reiterated the projections for the wood pellet plant proposed for East Baldwin that would become the baseline shipper for the rail line: an estimated 300,000 tons of annual production, 3,000 railcar loads, and 300 total related jobs [see 11#04B].

Responding to questions, Wood acknowledged that his company has been developing the project for three years, that it is "looking to be in production [within] the next five years," but could not become operational for at least two more years. He is "still securing financing."

The project relies on European utility "customers [who] are hungry [see 11#10A].... Rail is an important part of our plan," investors are looking for a sign of support, and the rail bond would be "helpful" but not "necessary" in that regard. He also revealed that market conditions have forced his company to close its sawmill and pallet plant.

Other proposed shippers. The code enforcement officer for Baldwin noted two local businesses, Estes Corporation (gravel) and Limington Lumber (white pine), as potential rail users. He implied that a reactivated rail line would put Baldwin on the map: many roads go through Baldwin but "no one knows where it is."
No local match available. Standish Councillor Louis Stack cited the 2007 HNTB study as concluding that operation of the Mountain Division would be profitable [HNTB actually called the operation 'highly problematic' – 11#04B].

As a fall-back position, Stack said only $10 million would be required to extend the first-stage track improvement [Westbrook to Windham now underway – see 11#02B] to East Baldwin. Responding to questions, he admitted that no local funding participation from shippers or municipalities is likely to be available.

Operator? Stack knew of no contact with a potential operator; he surmised MDOT would issue a request for proposals from private contractors. One committee member suggested the logical operator would be connecting carrier Pan Am Railways.

Stack was followed by Cumberland County Assistant Manager Bill Whitten, who gave a general endorsement of expanded rail transportation.

MMA position. Sarah Osborne, representing MMA President Bob Grindrod, said the Legislature should not commit to the large sums in any of the three bills without an assured funding stream for ongoing operating support. She also noted the absence of a bonding proposal for MDOT's IRAP (Industrial Rail Access Program) for construction of side tracks as an incentive for new rail freight users.

Jack Sutton, speaking for himself though he is president of the Maine Rail Group, repeated his call to connect the Mountain Division with state-owned rail lines in New Hampshire and Vermont.

Standish resident Richard Rudolph followed with the comment that commuter service triggers socio-economic benefits and that the public has the “right of mobility. Standish has no taxi car or bus and therefore needs the rail.”

Maine Rail Transit Coalition leader Tony Donovan testified that his group is supporting all three rail infrastructure bond proposals and stressed the value added to commercial real estate by the ready availability of rail transportation.

Maine Pulp and Paper Association President John Williams declared neutrality on LD 63. Forest product companies favor the general principles of the bills, he said, but cautioned against focusing investment to benefit one business over others. He expressed concern that the pellet plant could risk loss of pulp and paper jobs by competing for clean wood fiber also sourced for papermaking.

Senator Ronald Collins (R, Wells) observed that he was “beginning to get it;” that the State bought the line years ago because it was not viable and now is being asked to spend at least $25 million to rehabilitate it so the previous owner [Pan Am] might then operate it profitably.

Likely outcome. Comments from Committee members about the State’s financial circumstances, and certain probing questions, indicate a general Committee attitude of polite skepticism and probable vote on LD 63 of ‘ought not to pass'. {Coverage by special correspondent George Betke for ANR&P}

3 Many would contend that a successful taxi or bus service is a necessary precedent to consideration of a costly rail option. - George Betke
'Rail Lines in Western Maine' [SLR]
LD 417, “An Act To Authorize a General Fund Bond Issue To Improve Rail Lines in Western Maine” was proposed by Senator Margaret Craven (D, Lewiston) in 2011, and carried over to the 2012 second session. It would provide $20 million 'to improve rail lines in western Maine.' The bill states nothing more. {Legislature web site}

Craven supported the $5 million 2010 bond bill for the Lewiston area which did pass [see 10#03A and 12#01B].

This funding, she said on 28 February, will keep rail upgraded for both passenger and freight to keep the vision of passenger rail to Montreal from Boston via Auburn open.

She agreed that bond proponents “will not reach the level proposed.” But “I don't believe the treasurer and governor that we don't have the capacity to bond. We have a great capacity to bond; we should do it to keep our rating in place and maintain our infrastructure. Merchants and shippers depend on rail.” {ANR&P discussion}

'Invest in Railroads'
LD 851, “An Act To Authorize a General Fund Bond Issue To Invest in Railroads To Reduce the Cost of Shipping to Maine Businesses, Attract Tourists to Maine, and Facilitate the Development of Commuter Rail Transportation To Reduce the Use of Oil in Maine,” was proposed by Senator Barry Hobbins (D, Saco) in 2011, and carried over to the 2012 second session.

Section 5 would provide $25 million 'for railroad reconstruction and expansion that the business sector considers vital to the shipment of goods and the ability of the business community to compete.'

Under Section 6, 'The Department of Transportation shall consult with the business and economic development sector to develop a list of priorities in regard to railroad construction and reconstruction projects. To determine priorities of commuter and passenger railroad projects, the Department shall consult with organizations representing the public, including tourism associations and citizens groups, focusing on projects important to tourism and project with greatest visibility for increased commuter and passenger rail service and taking into consideration the extent that proposed projects reduce the consumption of oil.' {text from Legislature's website}

SEARSPORT: FUNDING FOR CONTAINERS?*
24 February, Augusta. THE APPROPRIATIONS COMMITTEE CONSIDERED A BILL TO FUND A CONTAINER PORT AT SEARS ISLAND. Introduced by Senator Doug Thomas, LD 420 would provide $200 million 'for building a privately-operated container port on Sears Island.' In his testimony, Thomas admitted “the chances of a general fund issue [for this] are nil, and none.” He confessed to looking for a way to move the project forward: “This needs to be a revenue bond, or a study....It's kind of like the East-West Highway” which Thomas also supports [see 11#11B].

Freight rail advantage
The “biggest reason for the port is freight rail, it will generate traffic...We have terrible freight service...volumes are so low the railroads cannot afford to maintain the system. [Traffic generated by a container terminal] would allow improvement of the system for all of Maine.”

Opponents
Two opponents appeared. One, Will Neils of Maine Earth First! said he has “worked against this proposal for almost 20 years.” {coverage via recording of hearing courtesy of Ron Huber}

MAINE LEGISLATURE: NO $
OF THE FOUR BILLS 'OUGHT NOT TO PASS.' They will proceed to neither body for a full vote. LD 63 (Mountain Division), 417 (SLR), 420 (Searsport), and 990 ($1 million for road and bridge construction) were voted on this day. Of the rail bills, LD851, the general funding bill, still awaited action. {recording of work session provided by Ron Huber}

SEARSPORT- MMA: DCP CONTROVERSY

March 2012. MANY LOGISTICS QUESTIONS HAVE EMERGED FROM THE PROPOSAL FOR A PROPANE TANK AT MACK POINT.

History in a nutshell
In early 2007 Maine nearly ran out of propane, due to a CN rail strike and an extremely cold winter [see 07#03A]. Then-Governor John Baldacci asked one of the state's major suppliers, DCP⁴, to look at avoiding a repeat.

In response, according to DCP, it has proposed a propane storage facility at Mack Point in Searsport [see 11#01B]: a tank, 138 feet high and holding 22.7 million gallons [see section 6]. DCP has permits from the Maine Department of Environmental Protection (MDEP), and seeks a wetlands permit from the US Army Corps of Engineers (ACOE).

To support the new tank, which would bring jobs to the area, the Town agreed by a vote at the 2011 Town Meeting [see 11#03B] to raise the height limit in the industrial zone [which also helped the new crane – see 12#02A] to 150 feet.

Opponents argue on several grounds against the tank, and have placed on the ballot at the 10 March 2012 Town Meeting a moratorium. Opponents have also filed an appeal in Maine Superior Court of the MDEP decision, and have asked ACOE to require a full environmental impact statement.

The logistics impact
A new tank would provide more port business because ships would deliver the LPG from offshore, and more rail business because MMA, which serves Searsport, could move the propane by rail to many of the rail terminals around the state, particularly in Aroostook County. [See map of rail terminals.] But, does Maine need more propane storage capacity? Could LNG replace some propane need, especially when LNG is one-quarter the price of propane?

⁴ DCP stands for Duke ConocoPhillips. Throughout this article 'DCP' refers to the entities which own and operate existing propane and other facilities, and which propose to own and operate the Mack Point tank.

'DCP Midstream Partners, LP is a midstream master limited partnership formed by DCP Midstream, LLC to own, operate, and continue to broaden our portfolio of complementary midstream assets. The Partnership gathers, treats, processes, transports, and markets natural gas and natural gas liquids (NGLs) and is a leading wholesale distributor of propane. Supported by our relationship with DCP Midstream, LLC, and its parents, Spectra Energy and ConocoPhillips, our geographically diverse assets, with strong market positions, and our mix of fee-based and substantially hedged commodity-based margins, position the Partnership for the long term.' {DCP website}


Gas Supply Resources LLC is a subsidiary of DCP Midstream Partners, LP. The terminals and distribution system became the Wholesale Propane Logistics division of DCP Midstream Partners and is apparently branded as such.
Missing articles
The articles about individual propane distributors [see reference in section 3.3] will appear in a future issue.

ARTICLE OUTLINE

Introduction
1. Table of disagreements; coverage of this article.
2. State propane demand and supply
3. How propane currently reaches Maine
   3.1 Global sources of supply
   3.2 Existing terminals
   3.3 What terminals use which sources
4. Could LNG replace LPG?
   4.1 More LNG pipelines coming.
   4.2 LNG trucks now employed.
   4.3 LNG railcars coming.
5. Tank characteristics
   5.1 Location at Mack Point
   5.2 Does it need 138 feet?
   5.3 Does it need to hold 23 million gallons?
6. Inbound ships
   6.1 Additional ships
   6.2 Security measures

1. TABLE OF THE DISAGREEMENTS
Proponents and opponents disagree about nearly every aspect of this facility. This table provides a nutshell view:

<table>
<thead>
<tr>
<th>Aspect of project</th>
<th>DCP position</th>
<th>Opponents' position</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. State propane demand, tank size, terminals.</td>
<td>Tank is needed for adequate supply</td>
<td>Supplies available from other sources</td>
</tr>
<tr>
<td>B. Substitution of other fuels for propane</td>
<td>Natgas cannot reach rural areas, oil costs, wood is not feasible.</td>
<td>Natgas is coming, including LNG.</td>
</tr>
<tr>
<td>C. Propane can come from US and Canadian sources by rail</td>
<td>Canadian production is down, and US production is exported</td>
<td>Rising natural gas and oil from shale and sands will suffice.</td>
</tr>
<tr>
<td>D. Mack Point location – tank height</td>
<td>Great rail and highway access; not Sears Island</td>
<td>Should not clear cut valuable woods, or damage view</td>
</tr>
<tr>
<td>E. Inbound ships</td>
<td>Existing 160/year unaffected by 6 more.</td>
<td>Hazmat limits will affect a wide range of water activities.</td>
</tr>
<tr>
<td>F. Delivery instate</td>
<td>Only incremental truck traffic increase. Rail will help.</td>
<td>Significant change in truck flow. Rail should increase.</td>
</tr>
<tr>
<td>G. Safety</td>
<td>Tank as safe as similar facilities</td>
<td>No LPG tank this large is safe.</td>
</tr>
<tr>
<td>H. Air pollution</td>
<td>Meets DEP standards.</td>
<td>Will damage immediate area.</td>
</tr>
<tr>
<td>I. Land pollution</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>J. Water pollution</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>K. Light pollution</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>L. Noise pollution</td>
<td>*</td>
<td>*</td>
</tr>
</tbody>
</table>

Coverage of this article
Atlantic Northeast Rails & Ports coverage extends eponymously to freight. Consequently, this article will focus on inbound and outbound volumes, the financial viability of any such project in Maine, and the selection of Mack Point as the appropriate site. Items G through L, while extremely relevant to whether the town and the state should accept the tank, lie beyond the scope of the article.
2. STATE PROPANE DEMAND, SUPPLY

2.1 Maine propane consumption
According to Michael Barden of Maine Governor's Office of Energy Independence and Security, 'Maine’s consumption of LPG has increased significantly in the last few years. Residential consumption has doubled in this time period and commercial use has tripled. During this same period, heating fuel consumption has decreased with LPG being substituted in part for these other petroleum sources.' {e-mail to ANR&P 24-Feb.12}

In 2010, the most recent year's available statistics available, Maine used 118 million gallons of odorized propane, or about 130 million gallons total. {ANR&P discussions with John Pratt, who handles marketing for DCP mid-Feb.12} [Pratt, hereafter]

### Maine Energy Consumption

<table>
<thead>
<tr>
<th></th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fuel oil (thousand barrels)</td>
<td>623406</td>
<td>519498</td>
<td>456078</td>
<td>467628</td>
<td>415567</td>
<td>360402</td>
<td>n/a</td>
</tr>
<tr>
<td>Residential</td>
<td>415002</td>
<td>353976</td>
<td>312102</td>
<td>304626</td>
<td>258216</td>
<td>232680</td>
<td>n/a</td>
</tr>
<tr>
<td>Commercial</td>
<td>146076</td>
<td>121044</td>
<td>109536</td>
<td>123102</td>
<td>111151</td>
<td>90762</td>
<td>n/a</td>
</tr>
<tr>
<td>Industrial</td>
<td>62328</td>
<td>44478</td>
<td>34440</td>
<td>39900</td>
<td>46200</td>
<td>36960</td>
<td>n/a</td>
</tr>
<tr>
<td>Total</td>
<td>623406</td>
<td>519498</td>
<td>456078</td>
<td>467628</td>
<td>415567</td>
<td>360402</td>
<td>n/a</td>
</tr>
<tr>
<td>Propane (thousand barrels)</td>
<td>1240</td>
<td>2329</td>
<td>2109</td>
<td>2807</td>
<td>2745</td>
<td>3070</td>
<td>n/a</td>
</tr>
<tr>
<td>Propane (thousand gallons)</td>
<td>52080</td>
<td>97818</td>
<td>88578</td>
<td>117894</td>
<td>115290</td>
<td>128940</td>
<td>130000</td>
</tr>
<tr>
<td>Natural gas (billion cubic feet)</td>
<td>73</td>
<td>58</td>
<td>50</td>
<td>57</td>
<td>61</td>
<td>70</td>
<td>n/a</td>
</tr>
<tr>
<td>Coal (short tons)</td>
<td>286000</td>
<td>276000</td>
<td>259000</td>
<td>251000</td>
<td>227000</td>
<td>65000</td>
<td>n/a</td>
</tr>
</tbody>
</table>

{US Energy Information Administration}

2.2 The 2007 shortage and request for additional capacity
In February 2007, a strike at CN led to curtailment of propane delivery to Maine [see 07#03A], and a call for additional capacity and diversification of supply.

Bill Waldheim, DCP group vice-president, marketing and trading, told a public gathering in Searsport on 26 January 2012 that the company became interested in building infrastructure in Maine in 2007 after Governor Baldacci contacted DCP to see if they could help alleviate a severe propane shortage in mid-winter. DCP later chose the Searsport industrial site because it has a deepwater port and rail lines and is centrally located for truck distribution in Maine. {Christine Parrish in Bangor Daily News 2.Feb.12} [See much more detail in 11#01B.]

Governor LePage's position on tank
Barden reported: 'Governor LePage understands that petroleum supplies are a world market that is influenced by supply and demand dynamics....Since all the LPG sources need to be imported into our state, we need to have adequate storage capacity to supply the demand.

'Maine’s energy strategy is based on the principle that consumers need to have access to multiple energy options so that they can select the source that meets their needs. The Governor has also placed a priority on lowering the cost of energy for Maine consumers.

'A key element in achieving that goal is to ensure people have access to energy options. LPG is one of those options that can replace oil as well as provide another option for those consumers that chose that energy source.

To support the needs, adequate receiving and storage infrastructure are required. The Governor does not

---

{About 10% of propane (propylene) is used to manufacture plastic products. {Jackson Stone 24.Jan.12 in propanepro.com}
oppose the required storage infrastructure provided applicable regulations and standards are realized.' {e-mail to ANR&P 24.Feb.12}

2.3 Does Maine need the tank as part of its supply?

2.3.1 Tank storage capacity and throughput. DCP's figures show that in 2010, the most recent year's statistics available, Maine used 130 million gallons of propane [see 2.1]

'The outdoor LPG bulk storage tank will be a vertical, insulated, domed tank with a diameter of approximately 202 feet and height above ground of approximately 138 feet, including the domed roof. The storage tank will have a capacity of 540,000 bbl (approximately 22.7 million gallons) and vertical walls approximately 102 feet high. The propane will be stored in a liquid state at essentially atmospheric pressure by maintaining the temperature between -44°F and -42° F.'

....'The maximum throughput of the DCP Terminal is based on receiving six ships per year, with each vessel carrying up to approximately 33,000 metric tons (MT) (approximately 410,000 barrels (bbl)) of liquid propane maintained at approximately -40 degrees Fahrenheit (°F). The actual number of ships per year could range from four to eight; however, the maximum amount of LPG received is not expected to exceed 200,000 MT (approximately 2,476,000 bbl) annually.' {MDEP approval letter 2011}

Too much throughput? DCP's six ships per year will total 2.46 million (6 x 410,000) barrels over a year, or nearly all of one year's supply (at 2009 figures) for the state. {Editor} However, reported Pratt, “we're not going to sell 100% of Maine's needs. We project 70 million gallons through there” [roughly half of Maine's consumption].” {ANR&P discussion 15.Feb.12}

2.3.2 Can existing terminals expand? Currently, Maine uses terminals just outside Maine, and rail terminals in Maine, to obtain its propane. [See section 3.2.] Maine can maintain adequate supply using the existing terminals. For example, Sea-3's Tracey says he can increase throughput at his terminal. {ANR&P discussion 9.Feb.12}

However, if one of the three legs of the supply fails (rail, or pipeline, or marine) suddenly, official Maine believes the suppliers cannot compensate by boosting the other two legs quickly.

The pipeline to Selkirk cannot add propane in the winter [see footnote two of separate article on Eastern Propane].

The ships of the marine leg are already spoken for, reported Pratt. Terminals contract to purchase propane “on a yearly basis” and ships are allocated for the season based on those contracts. Sometimes “you can get one on open market” but when Maine was experiencing the shortage in 2007, “there was not a ship to be had.” {ANR&P discussion 15.Feb.12}

Consequently, if the rail falters short-term, Maine has no cushion, according to DCP [see 11#01B].

3. HOW PROPANE CURRENTLY REACHES MAINE

3.1 Global sources of supply

LPG can come from any refinery of crude oil or raw natural gas [see box of terms on first page of article].

Nearest oil refineries to Maine. New Jersey and Delaware (though these are closing), Sarnia Ontario, Saint John, and Quebec City. Offshore refineries can also supply.

Nearest fractionating to Maine. Point Tupper, Nova Scotia.7 Maine could also source from the Bakken fields in

---

6The ships hold roughly 30,000 metric tons which is 15,630,000 gallons x 6 = 93,780,000 gallons. The tank will hold 22,000,000 gallons. If we end the year with a full tank the volume sold = 71,780,000 gallons.' {e-mail from Pratt to ANR&P 1.Mar.12}

7Natural gas liquids are a by-product of the processing that occurs at the Goldboro Plant. These liquids are separated and transported via a buried
North Dakota, and the shale fields in Pennsylvania. Fractionating also occurs in foreign locations.

3.2 Existing terminals serving Maine
Maine has at least nine rail-served propane terminals. Maine has no marine terminals at this time, nor a pipeline, though its propane distributors use two marine terminals and one pipeline out of state.

Dead River rail terminals
The Dead River Company owns four rail-served terminals in Maine which receive propane: Millinocket, NMRC service; Caribou, NMRC service; Hampden, MMA service; and Auburn, SLR service. [See separate article.]

Eastern Propane rail terminal
Rochester, New Hampshire (dormant one in Wells, Maine). [See separate article.]

DCP rail terminals
One wholly-owned in Auburn served by SLR, and one (Pine Tree Propane) jointly owned in Hermon, served by MMA.

Maine Energy rail terminal
In Hermon [see separate article].

EnergyUSA rail terminal
In Portland [see 12#01A].

DCP Providence marine terminal
Pratt said DCP sometimes trucks from Providence.

Sea-3 maritime terminal
In Newington, New Hampshire [see 02#01 and 07#07B]. Sea-3 is part of the Trans-Ammonia Group.

Selkirk pipeline
Propane wholesalers and retailers truck from a pipeline terminating in Selkirk New York to Maine.
3.3 Whence the terminals source propane

Five managers of propane sourcing and marketing [identified more fully in individual articles in future issue] all emphasized that the sources change at least annually. Pratt said that terminals contract with their sources “on a yearly basis” and then “project the number of ships they will need in the coming year.”

Recent sources were listed by each manager:

**DCP Midstream.** The new tank will bring in propane from the North Sea. {DCP website} DCP does operate its own plants, taking the petroleum liquids out of the natural gas.

    Currently, said Pratt, DCP sources from the pipeline. Railed supply comes from Sarnia, Alberta oil sands, and Bakken shale. {ANR&P discussion 15.Feb.12}

**Eastern Propane.** Gagne said “less than 50%” of his propane arrives by rail. He also uses the pipeline, the DCP marine terminal in Providence, and the Sea-3 marine terminal in Newington [see separate article].

**Sea-3.** In 2002, Tracey said he was importing from Norway and Algeria, and receiving by rail from Sarnia when prices are low in the summer. Very rarely, he would send out propane by rail. [See 02#01].

    During the summer after the 2007 shortage, Tracy said he could not build inventory because Sarnia had no excess so receiving by rail was “not economical to do.” Overseas, on the other hand “is competitive and reliable.” [See 07#07B and separate article.]

**Dead River.** Dorr said he receives from four Canadian sources: Sarnia, Ontario; Quebec City; Nova Scotia (“not as much this year”), and western Canada. He also uses Sea-3 and the DCP Auburn terminal. [See separate article.]

**Maine Energy.** Cort said the majority of his product arrives from Canada by rail. He trucks some from the DCP Auburn terminal. [See separate article.]

**4. COULD LNG OBVIATE THE NEED FOR MORE PROPANE?**

Maine Governor Paul LePage is actively calling for Maine to use more natural gas, as a cheaper alternative to other fuels. LNG, delivered, is now nearly four times cheaper than propane.10 His Energy Office states:

> The State of Maine Comprehensive Energy Plan identifies the goals of: (1) promoting natural gas as a “transitional fuel” by expanding the natural gas infrastructure to all sectors in Maine and (2) identifying development of liquefied natural gas (LNG) where economically, socially and environmentally feasible.

    We refer to natural gas as “transitional,” as it will remain and grow as a primary source of fuel in utility and industrial sectors while we aggressively pursue increased use of energy efficiency and renewable energy technologies and reduced consumption of foreign sources of oil. {Energy Office website, February 2011, page 13}

Propane suppliers note, however, that much of Maine, especially the more rural areas, will never be served cost-effectively by pipeline. To make it effective requires an anchor user, which most rural areas lack.

**4.1 LNG pipelines could serve more of the state**

Currently, at least three proposals would build laterals off the Maritimes and Northeast pipeline; that line, built in the early 2000s, runs from New Brunswick across the state, and already powers major facilities [see 04#08A]. It distributes gas from the Sable Island field off Nova Scotia.

**Current residential availability.** Northern Utilities (Unitil) currently serves customers in the greater Portland area, Lewiston, Auburn, and Kittery. Bangor Gas serves customers in Bangor, Brewer, Old Town, Orono and

---

10 Bangor Gas, according to its website, is charging $0.86 cents per therm for natural gas plus $15/month basic charge. Assume that translates into $1.00 per therm (100,000 BTUs) [about $0.250 at the wellhead].* One gallon of propane contains 91,500 BTUs {various websites give different values}, so creating one therm requires 1.09 gallons. Propane in Maine costs, per USEIA, at the end of February $3.25, well above its price of $1.50 in 2003. So one therm, generated by propane, costs $3.54. Breaking it down even further, natural gas needs to be more than $3.54 per therm, with propane at $3.25/gallon, for propane to be a more cost-effective energy solution.
Veazie. Maine Natural Gas currently serves customers in Windham, Gorham, Bowdoin, Topsham, and Brunswick. {Governor’s Office of Energy Independence and Security, February 2011}

Existing lateral to Newpage and Verso. The Newpage paper mill in Rumford has a lateral off the pipeline from Montreal to Portland beginning in Albany Township. Verso Paper’s Jay plant has a lateral from Rumford.\footnote{\textsuperscript{11}}

Great Northern Paper. The LePage administration is helping private investors prepare to run, in 2013, a branch

\footnote{\textsuperscript{11}Portland Natural Gas Transmission System (PNGTS)) is a high-capacity, high-pressure interstate natural gas pipeline which began serving New England's growing energy needs on March 10, 1999. Connecting the TransQuebec and Maritimes Pipeline (owned by TransCanada Pipelines and Gaz Metro) at the Canadian border and the Maritimes and Northeast Pipeline at Westbrook, ME (owned by Duke Energy, Exxon Mobil and NS Power Holdings) with the Tennessee Gas Pipeline System (owned by El Paso Energy Corporation) near Boston, MA, PNGTS is strategically situated between three major pipeline networks. [PNGTS website]}
line of six- to eight-inch pipe about 60 or 70 miles from the Old Town or Bangor areas through Lincoln and into the Katahdin region, where it would supply the two Great Northern Paper mills, said Ken Fletcher, director of the state’s energy office. {Nick Sambides in Bangor Daily News 18.Nov.11}

Madison Paper. Pipeline coming [see below].

Baileyville lateral. In 2011 the Woodland Pulp LLC mill [all production of which moves out through Eastport – see 11#03A] proposed a lateral the 4.5 miles from the main pipeline. {Sharon Kiley Mack in Bangor Daily News 19.May.11}

4.2 LNG trucks could serve facilities
Those facilities which cannot afford a pipeline extension, yet would use a large amount of LNG, are planning to, or have begun, trucking the liquid:

Lincoln Paper and Tissue. President Keith van Scotter said in November 2011 that he will begin trucking LNG in 2012 to his plant in Lincoln [rail available from ST, but not using it – see 11#11A]. He will save 30% versus heating oil, after investing $1 million to install dual-use burners for his paper machines, and a future $1 million for his biomass boilers. {Nick Sambides in Bangor Daily News 18.Nov.11}

Madison Paper. The mill is now trucking in natural gas. {Erin Rhoda in Waterville Sentinel 29.Nov.11} Kennebec Valley Natural Gas will build a lateral from Richmond to Madison to serve the paper mill here. {Waterville Sentinel 1.Mar.12}

[See also Omya in Vermont.]

4.3 LNG railcars coming

LNG Tank Car SR-603

**Bulk Transport Unit**

**LNG Delivery System**
The model SR-603 LNG tank car is a DOT-113C-120W tank car optimized for carrying maximum payloads of LNG. It is also suitable for transporting liquid ethylene. It complies with all Association of American Railroads (AAR) and US Department of Transportation (US DOT) regulations.

30,000-gallon tank car, Chart Inc. - Distribution and Storage Group

“No one is moving LNG by rail now,” said Scott Nason, product manager - mobile equipment for Chart Incorporated's Distribution and Storage Group, located in Plaistow, New Hampshire.

Chart is producing railcars to move liquid argon and other products at its plant in New Prague, Minnesota.

But AAR regulations do not yet cover the movement of LNG in railcars. {ANR&P discussion 23.Feb.12}
5. TANK CHARACTERISTICS

5.1 Location at Mack Point

5.1.1 Why did DCP choose Mack Point? John Pratt of DCP said that the tank is designed to serve Maine in response to the 2007 crisis. DCP wants direct marine access to Maine, rather than needing to truck from its terminal in Providence, to add to its marine leg. [See section 2.3.]

5.1.2 Why this parcel at Mack Point? Pratt noted that within the area designated by the state for development at Mack Point, only this parcel remains available.

Pratt pointed out that LPG tanks must have a buffer distance from distillate tanks, so DCP could not site the tank in the 'warehouse space' land available.12

---

12Other than the figures in the Port Authority booklet, no exact or official depiction of the extent of development of Mack Point appears to be readily available. Therefore the area that is zoned Industrial on the Searsport Land Use District Map that encompasses the existing terminals and the major portion of the DCP site is used herein as a starting point to define “Mack Point.”

′The total Industrially-zoned area of Mack Point encompasses approximately 260 acres. The approximately four-acre commercially-zoned parcel that would contain the DCP Administration Building was added to the Industrial area for a total acreage considered as Mack Point of 264 acres.

′The approximately six-acre area of Mack Point that will be owned by DCP and is abutted by Long Cove and the Montreal, Maine and
DCP has thus sited the tank in the 'available' space, according to the map following.

5.1.3 Not industrialized land. Opponents such as Ron Huber argue that the 'future development' area sought by DCP should not have been included in the state map. The 30-acre coastal forest is not an "already industrialized area... It is a great soggy tableland perched above above a shellfish-rich cove on one side, and the Mack Point industrial port on another. The Mack Point Forest has NEVER had industrial anything on it. The waterlogged soils are the same unplowed, uncultivated, never-built-on soils that predate European colonization, replete with "trees with knees" and pit and mound old growth soil characteristics. It is a climax second-growth forest - like all the Camden Hills.' {e-mail to ANR&P 2.Feb.12}

5.2 Does the tank need its 138 feet?

Opponents cite the obtrusiveness of the tank above the view line as damaging to tourism. Asked by the tank could not be lower, Pratt said DCP did use, in different facility in Virginia, two 10-million tanks resulting in a lower height. However, the Mack Point site, space-constrained, would not allow two tanks of lower height.

Nor could DCP sink the tank deeper into the ground. "We would have issues with ground water, if we did go down into the ground."

5.2.1 The viewshed effect. Charles Colgan, associate director of the Center for Business and Economic Research at the University of Southern Maine, said in a study done for DCP and released in late February on the economic impact of the DCP facility, that the industrialized area of the Portland region, including the tanks visible in South Portland and the Wyman station on Cousins Island, Yarmouth, have not affected tourism in that region.

Nor has the Dragon cement plant next to Rockland deterred tourism there. {text of study}

5.2.2 Opponents counter. In DCP's submission to MDEP, 'The visual impact assessment and project description never discuss viewer expectations, the existing landscape, or the color, form, line and texture of the tank or other visible structures.

'Impacts to all scenic resources beyond three miles distance are arbitrarily omitted even though the project will be clearly visible from scenic resources such as Turtle Head on Islesboro, the waters of Penobscot

Atlantic Railroad spur is substantially constrained by both access and limitations imposed by local Shoreland Zoning (i.e., the area is zoned as Resource Protection). This area is therefore considered not available for development which leaves a net area of approximately 258 acres on Mack Point that is either currently developed or potentially available for development.

Construction of the DCP facility will "develop" approximately 24 acres, which comprises approximately 9% of the 258-acre area.

'Within the 70 acres identified for potential development by the Port Authority and excluding the area to be developed by DCP, approximately 16 acres of undeveloped land remain to the south of Station Avenue. Another approximately six acres is shown on the Port Authority figures as undeveloped but is within the northwest corner of the Sprague Terminal fence line, and therefore considered not available for development in this analysis.' {DCP response to ACOE questions 4.Jan.12}
Bay, and from other locations – particularly at night.

'Even within three miles, there is no narrative or illustrative description of impacts to many important scenic resources such as the Sears Island trails, the Sears Island Causeway, Long Cove, Stockton Harbor and the Atlantic Ocean, public beaches and intertidal areas on the mainland and Cape Jellison, the Route 1 corridor, or to the scenic character of the Searsport area.' {text of complaint filed in Maine Superior Court challenging the DEP permit}

What economic impact? Opponents' study, for ThanksButNoTank (TBNT) by Mark Anderson of the School of Economics at the University of Maine Orono, on 20 February 2012 concluded: 'Since there is little in the published literature on impacts from LPG facilities like these im pacts described above, my professional judgment is that without further study we should assume that the impacts on property values and the tourism economy are adverse and significant.' {TBNT website}

6. INBOUND SHIPS

Opponents fear that the increased number of ships, along with the extra security measures required for LPG ships, will inhibit normal ship traffic for Mack Point.

6.1 Additional ships

DCP calculated that it would bring in an additional six ships per year [see section 2.3] to the existing roughly 160 ships a year calling Mack Point, each ship requiring 24 to 36 hours to discharge. {propaneformaine.com}

David Gelinas, head of Penobscot Bay Pilots, wrote that the 160 agreed with his records:

'My company measures our activity in terms of "movements". A ship that comes to Searsport directly from sea and then sails back to sea is listed as two movements. If that same ship goes to anchor in Searsport harbor and then shifts to the dock later, that shift is another movement.

'For Searsport in 2010, we had 373 movements. Of that, 64 movements were "shifts", bringing the total inbound and outbound movements down to 309. If you divide that in half to get the actual number of vessels, it comes out to about 155 ships.

'Now, keep in mind that we do not pilot all the vessels that come to Searsport; there occasionally are domestic tug and barge units that are not required to take a pilot. Just the barge which brings in ethanol alone came into Searsport roughly 12 times in 2010 without a pilot.

'Add in one or two more tugs and barges, and there could easily have been approximately 15 barges in addition to the 155 vessels we piloted. This figure does not include Bucksport, which had visits from 15 vessels (30 movements).

...[W]e [are] piloting a ship or barge on Penobscot Bay about every other day. As I have said before, we are not advocates for DCP or their tank proposal.' {e-mail to ANR&P 13.Feb.12}

6.2 Security measures

DCP contends: 'During transit and mooring, the Coast Guard will require a Zone of Security be maintained similar to that for the other ships. The rest of the time there will be no impact to the bay nor will DCP place any restrictions on access to the tidal flats.' {propaneformaine.com}

In a January letter to DCP, Gelinas wrote:

'Searsport Harbor is a broad expanse....While the Coast Guard has not yet defined what type of security zone

---

13Steve Tanguay of TBNT wrote: 'The lodging occupancy rate has been much stronger than the Rockland area. Last fall the Midcoast Welcome Center had to send people to Camden for lodging because our area was full.

I was talking with the Camden selectman last month about some Gateway one projects they are following through on in town. They did mention that the most-talked about problem around tourism is the dramatic increase in truck traffic from Dragon Cement, much of it to Searsport.' {e-mail to ANR&P 5.Mar.12}
might be required around anchored vessels [Gelinas surmised an LPG ship might need to be anchored sometimes], I see no reason why such a zone would extend more than ½ mile from the ship....[A]n LPG ship anchored in the middle of the mouth of the harbor would in no way restrict recreational or commercial navigation in or out of Searsport.' {letter to DCP 12.Jan.12}

6.2.1 Opponents counter. 'The waters of upper Penobscot Bay are among the premier recreational boating and fishing locations in the U.S. and are extensively used by sailors, kayakers, motorboaters, tourists, anglers and commercial fishermen, including by many Petitioners. Because of the inherent risk of catastrophic fire and/or explosion from LPG operations, federal safety and security requirements impose exclusion and safety zones around both traveling and stationary LPG tankers. Those requirements will interfere with and at times will prevent these existing recreational and navigational uses.' {text of complaint filed in Maine Superior Court challenging the DEP permit}

Steve Tanguay, an opponent, argues that the LPG ships must wait for the right tide. Gelinas responded: 'Any ship drawing more than about 30 feet needs to wait for enough tide to have satisfactory under-keel-clearance in order to safely transit Mack Point Channel. This is not controversial or a conspiracy; it's the way we have safely managed risk for decades.' {e-mails to ANR&P 5.Mar.12}

6.3 Ship availability
A 5 March report by Drewry Shipping Consultants argues that owners of LPG carriers will see increasing trade in 2012. Asian buyers have been demanding butane-rich LPG from the Middle East; India becomes the largest importer of butane-rich LPG. Increasing Saudi domestic consumption means a decline in Saudi exports.

More than half of global LPG consumption is primarily for heating and cooking in homes and businesses. Demand from India and China will drive trade. {LPG Forecaster London 5.Mar.12}

7. TRUCK AND RAIL FROM THE TANK

7.1 DCP estimates truck
MDOT traffic data available through its Bureau of Transportation Systems Planning estimate that 3.8 million vehicles go through Searsport a year; 300,000 of these are multi-axle trucks.

'DCP will increase the traffic by 50 trucks a day which will primarily be utilized in the winter months and not the tourist months. DCP will account for less than 5 one-thousands of a percent of overall traffic and approximately 6% of truck traffic. This traffic will result in no additional congestion or damage to the public roads.

'However, most of the traffic will be off tourism season in the months of November through February.' {propaneformaine.com}
7.2 DCP estimates railcar  
'The typical loading schedule during the winter heating season is estimated to be ... eight rail cars per day.'  {text of complaint filed in Maine Superior Court challenging the DEP permit}  

Pratt wrote on 3 March that DCP will have a rail spur with loading racks permitting loading of eight cars simultaneously. If MMA can switch the terminal twice a day, DCP could send out 16 cars a day.

7.3 Loss of rail traffic for railroads possible  
Pratt wrote 1 March: 'The Auburn and Hermon terminals [see section 3.2] will remain open. Instead of supplying them from Canada we will most likely supply them from Searsport via truck or rail.'  {e-mails to ANR&P}

8. VENUES OF THE DISPUTE

8.1 Town Meeting  
Opponents have successfully petitioned for a vote at the Searsport Town Meeting on 10 March, on a moratorium text.

The moratorium proposal begins with a finding that the Town's existing ordinances 'are inadequate to prevent serious public harm' from the tank. It imposes a moratorium on applications and permits on any LPG terminal.

The moratorium would begin as soon as adopted by Town Meeting and apply retroactively to 23 November 2011, and would terminate on 20 May 2012 (a 180-day moratorium).

The proposal would create a nine-person review committee: three appointed by the Board of Selectmen, three appointed by TBNT, and three drawn at random from a pool of volunteers from Searsport.

The Committee will recommend changes to town ordinances which would 'sufficiently protect the health, safety, and welfare of the citizens from the development of an LPG terminal.'  {text from propaneformaine.com}

8.2 Superior Court  
In September, MDEP granted DCP permits under the Maine Natural Resources Protection Act and Site Location of Development Act. On 2 December, the organization Tanks But No Thanks (TBNT) and several individuals filed an appeal of the MDEP action in Maine Superior Court for Kennebec County.

TBNT et al stated that DCP 'failed to meet its burden to demonstrate compliance with the Site Location Law and NRPA by submitting fatally deficient visual impact assessment and noise modeling analyses, and by failing to provide evidence of any kind regarding impacts to air quality, truck noise and scenic impacts, recreational and navigational impacts, and impacts to existing uses. The Department’s rubber-stamp review – despite and in blatant disregard of extensive public comment about the project’s significant and unavoidable impacts – further violates the Acts, and is unsupported by the evidence, is arbitrary and capricious, and is an abuse of discretion.'  {text of complaint}

8.3 ACOE: filling of stream and adjacent wetlands  
DCP applied to place fill in a stream and wetlands on the site. Some proposals to fill can fit under the 'Maine General Permit' which permits applicants to piggy-back off the MDEP application.

On 4 January 2012, ACOE informed DCP that several people had questioned the DCP action and requested the Corps take a closer look. ACOE requested responses to several questions about the project.

DCP provided answers on 12 January, including proposed mitigation of the wetlands impact. Public comment on the situation and the DCP statement was permitted until 29 February.

'Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.'  {text of ACOE public notice 31.Jan.12 from ACOE website}
CSXT: NORTH BROOKFIELD**

8 February, North Brookfield. “THE PROJECT IS ON TRACK AND ON SCHEDULE,” said Dan Bigda at today’s meeting of the North Brookfield Railroad directors – Mary F. Walter, Richard P. Chabot, and Jason M. Petraitis – who as North Brookfield selectmen are also railroad board members. Bigda, who owns Boxcar Services, plans to revive the branch off CSXT [see 12#01A] by summer.

Customers: C&D facility?

Bigda said a transfer station for outgoing debris is one of a half-dozen businesses ready to set up shop in North Brookfield. “No business plan these days works on the basis of ‘Build it, and they will come.’ ...We have a business plan based on agreements with five companies that will remain unnamed for the moment because there is intense competition in the shortline rail business.”

Mark Morin, a resident of East Brookfield, said he had spoken with North Brookfield’s largest employer, Quabaug Corporation, maker of Vibram soles, and Techo-Bloc NE, a manufacturer of commercial and residential paving stones, and neither was interested in freight service.

“That may well be the case,” Mr. Bigda said, “but with gasoline and diesel prices forecast to go to $4 and $5 a gallon by May, rail service may look that much more cost effective to companies.”

“Does anyone really think I would be able to assemble a team of investors in this project without the benefit of a business plan that demonstrates we have the ability to do what we claim?” he said.

Federal pre-emption?

Historically, the North Brookfield Railroad was chartered as a “common carrier,” leased to the Boston & Albany Railroad, and then Penn Central. Bigda said the reincarnated railroad would be an industrial switching service.

Next step

Bigda said the next task will be surveying the entire right of way from its terminus near Quabaug Rubber in North Brookfield to the east abutment of the trestle across the East Brookfield River in East Brookfield. After that will come the establishment of boundary markers, and then crews will begin clearing the track bed of brush and trees. {Bradford L. Miner in Worcester Telegram & Gazette 10.Feb.12}

He has hired a surveyor. He declines to name his investors. {e-mail to ANR&P 28.Feb.12}

STB on industrial switching

Question: In setting up a railroad, can one choose to become an industrial railroad, not overseen by the STB but not enjoying the federal status of a railroad? Even if one switches more than one company? (editor)

Answer: The answer to that question depends on the context in which the industrial railroad is operating, and the context depends on the particular facts of each case. Accordingly, it is difficult to answer your question as a broad hypothetical.

However, if an entity is providing service to multiple shippers on a line that it owns, the STB would most likely consider this a holding out of common carrier service, in which case, that entity would need operating authority from the STB.

Regarding the North Brookfield Railroad, there are some very unusual circumstances regarding this situation and there are facts that we still do not know. Accordingly, we cannot speculate on what type of authority (if any) North Brookfield Railroad would need from the STB. {e-mail to ANR&P from STB spokesperson}

PAS: TAXES OWING

21 February, Ayer. THE RAILROAD PAID SOME OF THE $401,567 IN BACK TAXES IT OWED THE TOWN, a total far higher than any other entity. In a list posted on the Town website the previous week,
PAS occupied 6 of the top 20 tax debtor slots for the Town of Ayer for 2011 and 2012.

After Pan Am Southern, the next single highest sum owed was $50,034.73 by Shaker Hills Golf Club:

<table>
<thead>
<tr>
<th>Name of Debtor</th>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>PAN AM SOUTHERN LLC</td>
<td>2012</td>
<td>$120,809.62</td>
</tr>
<tr>
<td>PAN AM SOUTHERN LLC</td>
<td>2011</td>
<td>$109,777.19*</td>
</tr>
<tr>
<td>PAN AM SOUTHERN LLC</td>
<td>2012</td>
<td>$72,934.50</td>
</tr>
<tr>
<td>PAN AM SOUTHERN LLC</td>
<td>2011</td>
<td>$53,308.90*</td>
</tr>
<tr>
<td>SHAKER HILLS GOLF CLUB</td>
<td>2011</td>
<td>$50,034.73</td>
</tr>
<tr>
<td>KLEENIT, INC</td>
<td>2012</td>
<td>$44,269.28</td>
</tr>
<tr>
<td>SHAKER HILLS GOLF CLUB</td>
<td>2012</td>
<td>$39,491.61</td>
</tr>
<tr>
<td>KLEENIT, INC</td>
<td>2011</td>
<td>$35,741.95</td>
</tr>
<tr>
<td>CRIDER, BARBARA</td>
<td>2011</td>
<td>$32,209.35</td>
</tr>
<tr>
<td>PAN AM SOUTHERN LLC</td>
<td>2012</td>
<td>$25,492.68</td>
</tr>
<tr>
<td>CRIDER, BARBARA</td>
<td>2012</td>
<td>$23,111.24</td>
</tr>
<tr>
<td>RUSSELL, FRANCIS TRUSTEE</td>
<td>2012</td>
<td>$20,122.38</td>
</tr>
<tr>
<td>PAN AM SOUTHERN LLC</td>
<td>2011</td>
<td>$19,244.20*</td>
</tr>
<tr>
<td>MOORE, CALVIN E TRUSTEE</td>
<td>2012</td>
<td>$17,141.45</td>
</tr>
<tr>
<td>MICRON REALTY LP</td>
<td>2012</td>
<td>$16,453.54</td>
</tr>
<tr>
<td>SCHWARTZ DAVID</td>
<td>2012</td>
<td>$16,067.93</td>
</tr>
<tr>
<td>PETER CENTRAL LLC</td>
<td>2012</td>
<td>$15,617.73</td>
</tr>
<tr>
<td>L &amp; L INDUST'L PRTY'S, LLC</td>
<td>2012</td>
<td>$11,927.82</td>
</tr>
<tr>
<td>RUSSELL, FRANCIS TRUSTEE</td>
<td>2012</td>
<td>$10,588.97</td>
</tr>
<tr>
<td>LOCKE, DANIEL</td>
<td>2012</td>
<td>$10,232.78</td>
</tr>
</tbody>
</table>

*According to an update 16 February, these items are no longer listed as delinquent. [See below.]

A disclaimer appears alongside the tax delinquent roster: 'The accuracy of this information is based on the Town of Ayer's Real Estate, Personal Property, and Water/Sewer Liens as of Tuesday, February 14, 2012. All tax delinquent records are public record. To report any discrepancies, please contact the Ayer Board of Selectmen's Office at 9787728220. To make a payment, please contact the Ayer Tax Collector's Office at 9787728209.'

Pan Am paid some

At the meeting of the Board of Selectman 21 February, Chair Gary Luca reported that the listing had already produced results. PAS contacted the selectmen's office on 17 February to immediately make payment of $185,000. Luca said Pan Am Vice-president Cindy Scarano indicated they "hope to pay the remainder in 30 days." {Mary Arata in Ayer Spirit 15 & 22.Feb.12}

Foreclosure unlikely

In the eighteen years of coverage of Pan Am by this newsletter, Pan Am has owed back taxes, but has always in the end paid or struck a deal [see e.g. 07#02A].

ETC CAPITAL v CAPE RAIL: THE CAPE RAIL ARGUMENT*

20 January, Pontiac, Michigan. A MICHIGAN COURT WILL HEAR ANOTHER MOTION TO DISMISS, BY CAPE RAIL, of a lawsuit filed against Cape Rail, the Podgurskis, and Andrew Reardon by ETC Capital. ETC filed this case in the Circuit Court for the County of Oakland, northwest of Detroit.

In its similar case in Massachusetts, ETC filed only against the individual shareholders. The Massachusetts court granted Cape Rail's motion to dismiss [see 12#01B]; ETC has now filed a request for reconsideration with the judge.
**Dramatis personae**

John Kennedy is former CEO of Cape Rail and a current shareholder (3,200 shares). Ted Michon is a current shareholder (200 shares). Dan Wahle is former head of sales and a current shareholder (200 shares). Chris Podgurski is now president and shareholder (3200) with Lori Podgurski. Andrew Reardon remains as treasurer and shareholder (3200 shares).

Ted Mills is president of ETC Capital.

**Jurisdiction**

Cape Rail argues that it does not do business in Michigan and therefore the Michigan court has no jurisdiction over it and should dismiss the case.

**More Cape Rail allegations emerge**

In Cape Rail's memorandum arguing for dismissal, it states that the original transaction between ETC Capital and Cape Rail occurred at a 'chance meeting...at the annual convention of the American Short Line and Regional Railroad Association in the State of Texas' in April 2011.

In May, per Cape Rail, Wahle travelled to Michigan and met with representatives of ETC. Cape Rail argued that Wahle did so without direction from the Cape Rail board, and did so in part to explore employment opportunities. ETC disagrees.

In June, 'ETC sent a “non-binding” letter of intent to Cape Rail....The shareholders approved and executed a Shareholder Resolution regarding the LOI in Massachusetts. Cape Rail subsequently elected to terminate the “non-binding” LOI and the decision to terminate was made in Massachusetts.'

On 19 August, 2011, ETC filed this action in Michigan against Cape Rail, the Podgurskis, and Andrew Reardon. On 31 August, ETC dismissed the case against the personal defendants, and filed against them in Massachusetts [perhaps because ETC feared that it did not have jurisdiction over the personal defendants in Michigan? See next article. Editor]. Also on 31 August, the Michigan court denied ETC's motion for a preliminary injunction.

**Hearing date**

The court has not yet set a hearing on the motion to dismiss, but stated it will occur after 1 March 2012. {pleadings from the Circuit Court for the County of Oakland, case 11-121173}

**ETC CAPITAL v CAPE RAIL: THE ETC ARGUMENT**

16 February, Pontiac, Michigan. *ETC'S BRIEF IN OPPOSITION TO CAPE RAIL'S MOTION TO DISMISS PROVIDED NEW ALLEGATIONS* about the dispute.

**Financial difficulties**

'As early as 2009, Cape Rail was suffering financial problems that came to a head during late 2010. By that time, the shareholders and directors of Cape Rail were discussing in earnest the need to find a solution....In early 2011, the Board members and shareholders agreed that a financial restructuring of Cape Rail was necessary...'

When Wahle met Mills in early March, Mills expressed interest in the company. Wahle told this to Kennedy and Michon, who were enthusiastic.

---

14 Wahle now works at US Rail of New York. ETC stated: 'Although not relevant to this Motion, ETC Capital and US Rail of New York, LC, do not have common ownership. {ETC brief page 1}

15 'Despite what Cape Rail states in its Brief, Mr. Wahle did not discuss future employment with ETC Capital during his trip to Detroit in May-June 2011. Instead, during due diligence following acceptance of the LOI, each share holder except E. Christopher Podgurski attended meetings with ETC Capital in which future employment was discussed.' {ETC brief page 1}
The governing law of the confidentiality agreements
Later, Kennedy (on behalf of Cape Rail, on 24 May 2011) and Reardon (as an individual, on 26 May 2011) signed confidentiality agreements which provided, in paragraph 15:

15. Governing Law. This Agreement and the rights of the Parties shall be governed by and interpreted in accordance with the laws of the State of Michigan, without regard to or application of its conflict of laws principles. The parties submit to the jurisdiction and venue of the Circuit Court for the County of Oakland, State of Michigan or if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this agreement.

The parties hereby waive any objections that they may have or could have to either jurisdiction or venue and stipulate that the venues referenced in this agreement are convenient.

ETC notes that Michigan will enforce clauses under which a party agrees to Michigan jurisdiction as long as 'This state is a reasonably convenient place for the trial of the action.' ETC noted that parties, witnesses, and evidence are in both Michigan and Massachusetts, making Michigan a convenient place.

The Letter of Intent
The LOI does not have a jurisdictional clause like the confidentiality agreements. However, ETC argues that paragraph 15 covers the LOI as its breach is an action 'arising indirectly' from the confidentiality agreement.

Jurisdiction over the defendants
ETC concedes that the Michigan court may not have personal jurisdiction over the Podgurskis, as they did not sign a confidentiality agreement. Reardon 'may be subject to personal jurisdiction' because of the confidentiality agreement. 'That this Court may not have personal jurisdiction over Mr. and Mrs. Podgurski and Mr. Reardon does not destroy the personal jurisdiction this Court has over Cape Rail.' {page 6}

The shareholders agree
Before Wahle visited Mills in Michigan in May, he had the backing of all five shareholders, who were aware he
was sending the e-mail. Kennedy, Michon, and Reardon supported the Wahle effort.

**Conclusion**

'It would not be unreasonable for the Court to exercise jurisdiction over Cape Rail.' {text of brief from court website}

**MC: MORE ON FLOUR MOVE**

23 February, Fall River. **GOLD MEDAL SECURED A TRACK DESIGN FIRM TO MAKE SURVEY OF ITS EXISTING SIDING FOR POSSIBLE EXTENSION** from the Fall River yard to its plant site [see 11#12A], wrote Chris Podgurski, MC president.

'Mass Coastal has spoken with Fall River City officials as well as some of the neighbors along the way, and there has been no opposition, just surprise that we are making re-activation efforts.'

**Room for more customers**

A former textile mill lies within 2500 feet of the current end of track, wrote Podgurski. 'It had a siding...and the iron is still there.' Borden Remington owns the building. Mass Coastal is actively pursuing possible customers for use of that facility as a warehousing or transfer facility.

**The track south of Fall River and the future**

The rails for the extension are '107-pound New Haven...in very good condition and geometry is largely how Conrail left it back in the 80s. It will require a substantial effort to install safety ties before we send trains back to either the Boremco Property or the Gold Medal Property. Obviously it is all driven by economics. We are working with Gold Medal to supply pricing for every raw material that it brings in, some of which could include a transload at either the State Pier or Boremco facility.

**The track to the Rhode Island line**

'We do not have plans to go to the State Line at this point, although it has been mentioned [see Rhode Island].' {e-mail to ANR&P}

**MC: AMMONIA MOVE**

15 February, Sandwich. **THE CANAL POWER PLANT DOES OPERATE OCCASIONALLY**, at least if one can infer from the delivery of an ammonia car to the plant this week.

Chris Podgurski, MC president, named it “the first car in more than a year” to the Canal generating station. [Formerly named Mirant, the owner is now “GenOn Energy” after a merger in 2010. {Michael de la Merced in New York Times 27.Apr.10}] After expending money and effort to bring the plant into air emission compliance by installing the ammonia-based scrubbing system (see 04#12A), Mirant relegated it to a backup role, operating only intermittently. {Paul Babin in Sandwich Broadsider 27.Jan.10} The ammonia comes from Fall River's Borden Remington (see 09#01A and other article). ]

**Rail rehab**

MC had the Sperry rail inspection car operate over its system recently, Podgurski wrote. MC changed out some rail on the Cape line at the switch to the GenOn plant as a consequence.

The ultrasonic inspection 'hadn’t been done since Amtrak ran. We were especially concerned with Fall River Sub (due to haz mat transport), which [revealed only] four flawed rails on that line.' {e-mail to ANR&P 15.Feb.12}
NEW HAMPSHIRE

ST-NHDOT: COMMUTER RAIL DEFUNDED*
15 February, Concord. NHDOT MOVED THE PROPOSED COMMUTER RAIL PROJECT TO THE 'UNFUNDED' LIST in the state's Ten-year Transportation Plan now before the General Court for approval. The House Public Works and Highways Committee held a hearing on the Plan this week.

Kit Morgan, the department's rail administrator, wrote that NHDOT moved the $250 million NH Capitol Corridor project [which will operate on Pan Am-owned track carrying only freight at this point – editor] from the 'project list' to the 'unfunded projects' list.

'It was previously listed as contingent on grant funding, and removed (by DOT) to be consistent with how we are treating financial constraint and all unfunded projects,' wrote Morgan. {e-mail to ANR&P 23.Feb.12}

RHODE ISLAND

PW: NEW CUSTOMER?*
23 February, Tiverton. SCRAP FROM A BRIDGE COULD MOVE BY RAIL, according to some estimates. RIDOT is building a new highway bridge over the Sekonnet River. Once finished, later this year, a demolition contractor will take down the old bridge, and its scrap metal could move out by rail. {railroad e-lists}

Who would serve Tiverton?
If the scrap were landed in Tiverton, and if the MassDOT-owned rail line were extended south over the state line from Fall River [see Massachusetts], the scrap could be loaded into rail cars. However, though MC has the right to serve all customers on the MassDOT line, PW retains the exclusive freight rights in RI,' confirmed PW general counsel Marie Angelini. {e-mail to ANR&P 23.Feb.12}

[In all probability, the scrap would move by barge the short hop across Narragansett Bay to the scrap terminals in Providence. But reviving PW's franchise on this branch is intriguing. Editor]

VERMONT

VRS: NO GAS BY RAIL*
16 February, Florence. OMYA WILL RECEIVE LNG BY TRUCK, NOT RAIL, wrote Erik Bohn, the company's director of logistics for the Americas.

Converting to natural gas
Omya announced 14 February it would embark on a $7-$10 million project to switch to liquefied natural gas from fuel oil. Omya plant manager Pierre Masuy declined to state the energy spend. “For competitive reasons, we don’t like to share those things. What I can say, when you put together energy, which is kilowatts, and fuel oil right now that we’re using, all together that is the major cost of our plant.”

Omya uses electricity to power its grinding machines. The marble ore is mixed with water and ground into fine particles for use as either a slurry (wet) or powdered product. If it’s a powdered product, the company runs its dryers using No. 2 fuel oil. That represents a significant amount of fuel oil, since half of the plant’s production is dry calcium carbonate, Masuy said.

Omya officials said the project, believed the first of its kind in Vermont, would entail the construction of
eight, 15-thousand gallon, vertical storage tanks. It will also require Omya to convert its drying process to a
dual system capable of operating on both LNG and No. 2 fuel oil. {Bruce Edwards in Rutland Herald
15.Feb.12}

**Truck-hauled versus rail**
The liquefied natural gas would be trucked to the plant daily. Bohn wrote: 'We would certainly prefer to receive
LNG via rail, but at this time, the infrastructure doesn't exist, at least here in the Northeast. Only truck-loading
is available today.

'LNG cryogenic tank cars are very rare, very expensive and very long (handling curves at or near our
plant could be a challenge)! As more interest is generated in LNG, I am sure rail transport will become a more
requested alternative for us to consider.' {e-mail to ANR&P 16.Feb.12}

---

**RAIL SHIPPERS**

*Described in this issue.*
GenOn (MC, Massachusetts)
Gold Medal Bakery (MC, Massachusetts)
Omya (VRS, Vermont)
Wood, FE (Mountain Division, Maine)

---

**EDITORIAL**

**GUEST EDITORIAL ON MOUNTAIN DIVISION**
Maine rail advocates certainly aren’t bashful. Despite the state’s pressing fiscal problems, once again Mountain
Division proponents came to the table seeking bond money, undeterred by USDOT’s decision not to provide
$8.3 million to the project in the third round of TIGER funding.

I note for the record that, in addition to lack of testimony from any credible rail users, officials from the
towns of Windham16 and Fryeburg were conspicuously absent.

Advocates who did appear have the fundamental presumption that the railroad is the “answer,” yet
nearly all spoke from a superficial knowledge of the transportation business, and no one offered evidence
obtained from railroad professionals.

I heard no mention of freight rates or railroad economics, only the desire to get trucks off Route 113.
When pressed on that subject, Mr. Wood replied that the train could eliminate 26 daily round trips, an average
of barely one per hour. If there is an issue, it would appear to be one of pavement damage, not road congestion.

Most revealing, after the one-and-three-quarter-hour hearing, was the absence of any suggestion that the
Mountain Division project is advancing after three years of development. It still lacks firm investor or user
commitments.

This seems to be a case of, “If you can’t convince the federal government to fund it through TIGER III,
let’s try the State again.”

- George Betke

---

16 In June of 2011, Windham Town Councilor Tommy Gleason said decision makers are bringing rail in the wrong part of the state, on a track that
Guilford closed in the early 1980s because it was a geographically challenging and relatively slower route that bypassed large population centers.

“This money would be much better spent extending rail on the coast, especially in Brunswick, which is where you’re seeing a lot of the
major investment coming into this state,” Gleason said. “This track along the Mountain Division, I just don’t understand the reasoning behind it.”

Gleason said the jobs that would be created are too few to pay for the cost of the line, and that subsidies would be required into the future.

He sites required subsidies for Amtrak, which are so steep the federal government is considering selling Amtrak’s line in the Northeast Corridor.

{John Balentine in keepmecurrent.com 6.July.12}
Coverage
The newsletter covers the operating freight railroads and ports in New England, the Maritimes, and eastern Québec, as well as the government environment they function within. Coverage includes passenger rail and ships when relevant to freight operations.

Frequency and the e-bulletin
ANR&P appears at least four times a month. We send a formal issue twice a month, via post or e-mail. Between the issues, we send out the e-bulletin, only by e-mail. All information in the e-bulletin is included, and often updated, in the issue.

Stories not updated for the issue are noted with an asterisk. I urge readers to look at the issue’s updated stories (those without an asterisk).

Readers building a personal archive of the newsletter should discard the e-bulletins. All subscribers have access to the newsletter archive on the web, via password, at www.atlanticnortheast.com. If you do not have a password, merely request one from me.

Pricing
Subscriptions cost $395 for professionals, $125 per year for students, young and old. (Subtract $30/year for e-mail). Introductory prices available. The e-bulletin, sent by e-mail at least weekly between issues, is free of charge to all subscribers.

Advertising
Subscribers may purchase half-page ads for $100 per issue. Non-subscribers, $200.

Copyright notice
PLEASE DO NOT COPY THIS NEWSLETTER, or forward it in e-mail format, in whole or in part. You receive it as a paying subscriber, or a potential subscriber. Passing it on without explicit permission of the editor violates copyright law, and diminishes the likelihood of our staying in business.

However, anyone may quote bits of articles, with attribution, under the fair use doctrine.

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.'

E-MAIL VERSION