Helping to move rail and port traffic through New England, the Maritimes, & eastern Québec. A twice-monthly trade newsletter.


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PEOPLE, POSITIONS, EVENTS

[No report.]

For real

Ed Burkhardt and Fred Yocum have spoke openly about the solid offer for the B&A. They’ve convinced me, so let’s hope they convince the bankruptcy judge on 25 October.

- Chop Hardenbergh

REGIONAL ISSUES

B&A SALE

25 September, Northern Maine Junction. UPDATE ON IRR NEGOTIATIONS. According to an affidavit from Fred Yocum,

- On 20 September, the consortium ‘expanded and increased its offer’ of 13 September, including all of CDAC and NVR north of Newport.
- By 25 September, CFQ had verbally indicated to Yocum it was contemplating increasing the ‘value of its offer.’ [affidavit II submitted to Bankruptcy Court]

4 October, Northern Maine Junction. THE RAIL WORLD/WLE CONSORTIUM WILL PAY ALL CASH FOR MOST OF THE B&A SYSTEM. A press release issued late this afternoon said:

Bangor & Aroostook System ("B&A") is pleased to announce that the consortium of Rail World, Inc., The Wheeling Corporation and others, have entered into a letter of intent for the consortium’s purchase of the rail properties of the B&A for $62,000,000.00. Under the agreement, the consortium will purchase the stock of the Québec Southern Railway Company Ltd., the operating

FROM THE PUBLISHER

Issue 01#10A 10 October 2001

From the Publisher

Next issue: 23 October
assets of the Bangor & Aroostook Railroad Company ("BAR"), the Canadian American Railroad Company, the Van Buren Bridge Company, Logistics Management Systems, Inc. and, in addition, The Northern Vermont Railroad Company Incorporated and the Newport & Richford Railroad Company, except south of Newport, VT...

B&A’s President, Frederic W. Yocum, Jr. is pleased with this transaction and stated, “We are very fortunate to have such an experienced and successful group of rail executives purchasing our railroads. We plan to conclude the transaction as quickly as possible, with a goal for transfer no later than December 31, 2001. Our first priority is to continue vital rail services to our customers while working toward this goal.” Yocum further stated, “The support we have received through the last several months from our customers, creditors and lessors, especially in response to the Involuntary Petition in Bankruptcy against BAR, has been very much appreciated. There is now light at the end of the tunnel. This sale will have many positive benefits for the majority of our employees, customers, creditors and lessors.”

Yocum also stated that B&A is negotiating for the sale of its remaining assets not included in this transaction.

The all cash aspect/no financing contingency
Yocum, in a later discussion, said the consortium will pay “all cash, there will be no assumption of debt.” Furthermore, there is no ‘financing contingency’ meaning the sales agreement does not depend on getting financing. “This is very unusual, especially in major railroad transactions. There are few groups able to make purchases with no such contingency.”

Track?
The consortium has the option of either buying the track back from the trust which purchased it from the System, or working with the trust, Yocum said.

Why the asset sale
The selling of assets, rather than the stock, of BAR, CDAC, and NVR means the consortium has the option of accepting current labor agreements, or beginning anew.

Under US federal law, the buyer must serve on-site notice to all workers stating what jobs the buyer will make available, the working conditions, the pay, and how the jobs applied. After posting the notice, the buyer certifies that fact to the STB. When it accepts the certification, a 60-day clock begins to run. When it ends, the sale may occur.

The consortium will probably move quickly on this, said Yocum, since the 60-day clock “is the limiting factor.”

Why QSR stock sale?
Per Yocum, Canadian law requires the assumption of labor agreements. In addition, given the structure of the company and its financial affairs, “a stock sale made more sense.”

And the fate of CDAC?
According to Yocum, the consortium intends to retain CDAC.

“There are advantages keeping the system intact; a lot of interests are served by that.” Asked which, he listed CPR, the Irving interests, the State of Maine, on-line shippers, and a large number of NBSR shippers. The shippers may like the CN route with its speed and flatness, but “they prefer to have a competitive option.”

How will creditors react?
Each will make its own determination, noted Yocum. Helm must decide whether to work with the consortium or pursue the bankruptcy. The consortium will work the creditors in various classes. {ANR&P discussion 4.Oct.01}

7 October, Maine. QUESTIONS ABOUT THE SOUNDNESS OF THE LETTER OF AGREEMENT arose following the announcement on 4 October that the Rail World/WLE had an ‘agreement’ also titled a ‘letter of intent’ to purchase most of the B&A System for $62 million.

Text of letter of intent
According to an e-mail of State Representative Chris Hall circulated to Maine legislators and MDOT officials and obtained by Atlantic Northeast Rails & Ports, the agreement contains these clauses (language paraphrased)

- Seller must receive satisfactory releases of all obligations from the secured creditors;
- Assets are to be conveyed free and clear of all liens [Hall: including, presumably, each town and other creditors [[which have liens - editor]];
- Offer is subject to final approval of all boards of sellers and buyers and their affiliates;
- All necessary regulatory and bankruptcy court approvals;
- The term sheet outlining the offer is an expression of the INTENT of buyer and seller only and shall not convey any legally binding obligation;
- Sellers and buyers shall negotiate on good faith, but shall have no obligation to pursue or complete any transaction;
- No obligation shall arise until mutually satisfactory definite agreements shall have been entered into.
- Through December 31, 2001, buyers shall have sole access to all records to undertake their due diligence research.
- The seller shall not entertain any other understandings or talk to any other party during this time.
- The consortium is making no down-payment to secure this exclusive right, nor does the Letter of Intent contain any penalty if either party withdraws from the deal. {Hall e-mail}

1. Is the letter of agreement binding?
While the 4 October press release used the word ‘sale agreement,’ it also said that the consortium ‘have [sic] entered into a letter of agreement for the consortium’s purchase’ [see e-bulletin (v)].

Robert Grossman chair of Emons, noted the press release described the event as a letter of intent, “which is not generally a binding agreement. It usually permits the purchaser to do due diligence, to look at existing agreements, and talk to customers.” After that, the parties enter into a “definitive purchase agreement”
and finally a closing. [ANR&P discussion 5.Oct.01]

2. **What source of funds will the consortium use?**

Hall’s e-mail states: ‘[T]here is no indication of the source of funds, and $62 million is well beyond the apparent resources of the principals involved, according to Dun & Bradstreet credit reports and to their track record. A clue about this is the provision in the letter that New York law shall be governing, suggesting other financing entities not disclosed.’

[Comment: Burkhardt alone will have the $62 million in hand in two days. He co-founded the Wisconsin Central Railroad in 1987 on more than 2,000 miles of railroad line and trackage rights acquired principally from the Soo Line Railroad Company. CN is now buying the Wisconsin Central at $17.15 per share, paid in cash on 9 October. According to the proxy submitted for the annual meeting earlier this year, Burkhardt owned 3,980,004 shares plus some options. Thus he will soon become more than $68 million richer.

Note, however that Rail World Inc. (RWI) just purchased a 1/6th stake in the Estonian State Railway for about $15 million, so the consortium must have access to more than just the Burkhardt personal fortune. Editor]

3. **Does the price look realistic?**

Hall continues: ‘[T]he deal appears to lack reality. It is not:
- Consistent with current markets for railroad properties, which would suggest a significantly lower valuation of the properties, and which I estimate to be in the $30 to $45 million range depending on track condition and upside potential;
- Consistent with the current state of the BAR system, with its major investment needs to compensate for the penny-pinching of the last few years of financial stress;
- Consistent with the near-term prospects for revenue from the properties;
- Consistent with the same group’s earlier offer of just 2 weeks ago, which I understand was for $10 million for the north-south BAR line (approximately 60% of the total system by revenue);  
- Consistent with the public record of what the competition has offered (Chemin de Fer de Québec offering $10 million cash, plus the conditional assumption of ‘up to $25 million’ of secured debt, for the BAR north-south line).’

[Comment: Railroad executives use a rule of thumb for prices: between one and two times revenue, with most properties falling toward the low end. Burkhardt himself admits to paying only 1.2 times revenue—see below.

Also, recalling that MDOT will pay for $1 million in track work, and buy land in Searsport worth $1 million, one could add $2 million to the price. Editor]

4. **The timing of the letter of intent**

After questioning the reality of the price, Hall adds: ‘However, the offer is consistent with a number that is high enough to pay off all the secured creditors and even offer the unsecured creditors some hope of a partial payout, thereby making it very attractive politically. It will become apparent in time whether this letter of intent is “for real” or “for the judge.”’

Hall also wrote: ‘It may well nevertheless be the best bid likely in terms of both money to pay off creditors and keeping the greatest amount of the system operating.’

[Comment: Other parties in the industry, who of course have vested interests that may be diametrically opposed to those of the Rail World group, believe that the agreement was designed “for the judge.” Editor]

**Another opinion**

Grossman characterized the $62 million as “an aggressive price for a risky transaction.” He downplayed the worth of the lines in Québec, on which his company bid in the range of $7 million. “It’s no gold mine,” having only three customers of any significance, plus some other smaller ones.

Emons remains interested. “We put a lot of effort into our offer. It’s not over until the fat lady sings. I think she’s humming now, but is not yet singing.” [ANR&P discussion 5.Oct.01]

**B&A response**

Yocum agreed that the agreement is not binding on the consortium. “But it should become clearer in next three or four days. We have made substantial progress, and we have a better alternative than bankruptcy. This week, both sides will work on reaching a binding agreement, including applying to the STB.”

The letter of intent should be welcomed: “We have narrowed the purchaser down to one party, and that party will buy all the trackage in Maine.”

Moreover, people in Maine should not be concerned about the financial resources of the purchasers, nor about the price. “Remember, CFQ bid $40-$45 million for the BAR alone.” Yocum firmly believed the CFQ price to be a fair offer, and a sound offer.

“Given that, the consortium offer is certainly within the range” because the consortium is buying much more than the BAR. “Remember, people were concerned that Mike Haverty [chief of Kansas City Southern] overpaid for the TFM. [Grupo Transportation Ferroviaria Mexicana], yet he’s making money with it.” [ANR&P discussion 7.Oct.01]

**Burkhardt response**

Asked for comment on the Hall e-mail, Burkhardt wrote this:

“The Letter of Intent is perfectly normal for this sort of deal. It is not the Asset Purchase Agreement, which comes next. We are hard at work on it.

‘One would be wrong to read too much into the Letter of Intent's disclaimers and fuzzy language. We have spent a lot of money and put a lot of effort into getting the plan to this point. We are not doing this for our health!

‘I don't think it is doing anyone a service to view a half-baked pie and observe that there are no "guarantees" it will actually turn out to be edible. Parsons and I have baked a lot of pies in our careers, and we have never had one that got to this point in its cooking that didn't win culinary prizes. And of those that we
closed, all were successes (at least until successor management, in overreaching for quick profits, damaged what were valuable, well performing businesses.) But that's another story!

‘Here's one to consider: the original price of Wisconsin Central was $122 million (all cash), and the prior operator was doing $85 million in business, or a price of 1.4 times revenues. In the B&A case, we are paying $62 million (all cash) for $50 million revenues, or 1.2 times revenues. These two railways are light density systems dependent on the paper industry. There are some dissimilarities, but in most respects they are comparable. This is not an amateur enterprise!’  {e-mail to ANR&P}

8 October, Chicago. BURKHARDT ISSUED HIS OWN PRESS RELEASE announcing that an RWI investor group had taken a major step toward the acquisition of the Bangor & Aroostook system. {press release}

9 October, Chicago. QUESTIONS ANSWERED ABOUT THE RWI BID by Burkhardt:

Why did you decide to retain CDAC intact?
It simply proved to be the best of a whole series of alternatives. We are planning to introduce a lot of efficiencies, which then tilts the scale in favor of sustainable light-density operations. In a way, I surprised myself, being thoroughly grounded in class I economics. See item about the CP below.

Are you receiving any support from other parties which enables you to promise to keep CDAC open?
We have received some support from CP, and are talking with NB shippers about a greater traffic commitment to support the rail alternatives they say they want and need. We also hope to see a continuance of support from the state of Maine, which they have promised to continue to provide.

Will you abandon any trackage in northern Maine?
The only trackage we don't intend to operate is the Vermont line south of Newport. {e-mail to ANR&P}

B&A BANKRUPTCY
7 September, North Billerica MA. GUILFORD STATED, in a letter from President Thomas Steiniger to the Bankruptcy Court written this day [excerpts only]:

Because GRS has a vested interest in rail freight transportation in the Northeast, we believe that it is important for the Court to be aware that any outcome of these proceedings has the potential to effect not only GRS, but also the entire transportation system in the entire region. Therefore, while GRS is not seeking to become a party to the current proceedings, we do believe that the effect of these proceedings goes well beyond the relationship of the BAR and its creditors, and the purpose of this letter is to outline our view of how rail service in the Northeast might be affected by recent events.

[1994 offer to purchase resisted by MDOT]
As mentioned above, the lines of GRS and the BAR connect at Northern Maine Junction, and a significant amount of traffic is interchanged between the two carriers at this location, including commodities such as forest products, clay, paper and intermodal traffic. Because of this connection, GRS is familiar with the operations of the BAR, and has long sought to improve the movement of traffic between the two railroads to points in Maine and elsewhere.

These efforts have included an offer to purchase the BAR when its previous owner sought to divest its interest in the mid-1990’s. To GRS, the purchase of the BAR system seemed like a natural progression, whereby a financially sound connecting carrier could absorb the BAR and consolidate its operations to improve its profitability.

Unfortunately, the State of Maine Department of Transportation felt differently, and actively supported the idea that the BAR should remain independent, despite our belief that an independent railroad would not be able to sustain itself over the long term in light of the conditions present on this line. In the end, the Department of Transportation elected to support the efforts of the BAR’s current ownership group, doubtless with the best interests of the State of Maine in mind.

However, recent events suggest that there was merit to our belief that consolidation was the appropriate avenue to pursue at that time.

Nevertheless, we have continued to work with the BAR to develop transportation opportunities between the two railroads, albeit with minimal success. These efforts have included attempts to develop joint operating arrangements that will take advantage of our connection to allow for faster, more efficient movement of goods into and out of Northern Maine.

Despite the efforts of GRS to develop these agreements, there was only minor progress in this area until [McCain requested that the BAR and GRS route shipments to the Ayer intermodal facility—see 10 April issue Vermont. The railroads' new route resulted] in competitive rates and faster transit times....

Moving forward, we believe that the recent McCain’s transaction could serve as a model to implement joint arrangements that, if GRS is given the opportunity, can produce significant benefits to the rail shippers of Northern Maine.

[Second attempt to purchase rebuffed by IRR]
Moreover, we believe the Court should be aware that GRS has also recently expressed its interest in acquiring the BAR, but these efforts were rebuffed as well. In short, when the BAR first made it known that it was pursuing a sale of its assets, GRS contacted senior management of that railroad to formalize its interest in an acquisition.

The first contact was made with senior management of the BAR's holding company in Washington, D.C., at which time we were informed that the BAR would respond to our inquiry once it had resolved its short-term cash concerns. Although we were not contacted again, GRS continued to have an interest in acquiring the BAR, and GRS representatives traveled to Bangor last spring
to meet with the President of the BAR in an effort to underscore our interest in the property. This inquiry was also rebuffed when the BAR asserted its concerns with maintaining the confidentiality of its customer and rate information.

While GRS did offer to execute confidentiality agreements to alleviate these concerns, the BAR was not receptive to this proposal and discussions went no further, despite the potential advantages that such a transaction could produce for shippers.

[Need for continuity in interchange]
[Steiniger concluded the letter by saying] continued interchange and cooperation between GRS and the BAR or any successor is necessary....GRS believes that any resolution of the present proceedings should take into consideration the important transportation issues....and that the Court [should note that GRS offers to help provide] uninterrupted rail service until this matter is fully resolved. {Bankruptcy Court website}

25 September, Portland. THE BANKRUPTCY COURT SHOULD DECIDE ON THE BANKRUPTCY by 25 October, under a pair of orders entered this day by Judge Haines at the telephonic pre-trial hearing.

Parties in attendance, as represented by counsel and sometimes also themselves: Progress Rail, Union Tank Car, NBSR/EMRY, Residco, Helm (principals Matt Ogbum and Barbara Wilson), BAR, CPR, Ebenezer Railcar Services, Radnor Railcar (principal Kent Zehner), Bank Austria, MDOT (principals Rob Elder and Allan Bartlett), American Train Dispatchers, Irving. [Note: Only with a telephonic conference could so many principals attend, from distant points, without using up an entire day or more. Editor]

The argument
Helm argued that its motion for summary judgement and for an entry of an order of bankruptcy should happen quickly [see 18 September issue]. If appropriate, the judge later could suspend the bankruptcy. A trustee in bankruptcy could best give impartial advice on the appropriateness of suspension or dismissal. If the judge agreed the summary judgement would be postponed, Helm wanted a stay of all sales outside the ordinary course of business (“a 303f order”).

BAR, Progress Rail, and Bank Austria agreed that BAR was not paying its debts and was prima facie equitably bankrupt. However, they underscored to the judge that bankruptcy was not in the best interests of the debtor or the creditors, and the Court should abstain from acting at this time. They saw no need for a 303f order since by virtue of its attachments Helm could stop any sale.

The decision
Haines agreed that he could put the BAR into bankruptcy and then, later, decide if the bankruptcy should be suspended. However, that was not appropriate. Instead, he told BAR that if it agreed to a 303f order (its counsel did so readily) and if the parties could be ready for a hearing quickly, he would set up a 25 October hearing at 9AM at which he would decide both BAR’s motion to abstain, and Helm’s motion for summary judgement. The scheduled 2 October hearing on the summary judgement was postponed until then.

The judge also ordered both sides to proceed with discovery in cooperative fashion on 305 issues (best interests of the Debtor), including the examination of the debtor permitted under US Bankruptcy Rule 2004 which will happen 17-19 October. Parties should exchange witness and exhibit lists by 22nd October.

Some interesting points
- BAR attorney Keith Cunningham noted that by statute the Surface Transportation Board can put in place another railroad to operate the BAR in a bankruptcy case. “That’s a risk which the bankruptcy would open up, though I’m not saying the STB will do so.”
- A BAR bankruptcy could trigger bankruptcy for other Iron Road subsidiaries, some of which lie in Canada, which does not have a reorganization provision. That could considerably slow the BAR case, argued Cunningham.
- Helm, said counsel Curt Kimball, has some affidavits from interested purchasers of the BAR, saying they will proceed only if a sale takes place in bankruptcy.
- The judge noted that the BAR talked about Helm trying to “coerce a payment in full. That’s perfectly appropriate, unless the debtor is in bankruptcy.” In fact, “because of the attachments, I don’t see how BAR will manage a sale without a payment in full to Helm.” [ANR&P coverage]

3 October, Portland. PARTIES AND APPEARANCES entered as of this day, according to the court website:

[These names were sent out in e-bulletin (x), and omitted here for space reasons.]

CONNECTICUT

TRANSPORTATION STRATEGY BD
4 October. THE STATUS OF THE BOARD was described to the Connecticut Public Transportation Commission by William Messner, policy administrator of the Bureau of Policy and Planning at ConnDOT. Fred Riese, the acting chair, gave this summary of the presentation:

‘Transportation Strategy Board. 13 of the 15 members have now been named. First meeting was Oct. 1. Second meeting to be a two-day affair Nov. 3-4. The 5 Transportation Investment Area (TIA) Boards are mostly constituted and have begun working. They must submit their initial Corridor Plans to the Trans. Strategy Board by Nov. 15. There are 5 of these Transportation Investment Area or Corridor boards: the Coastal Corridor (SW Conn), the Southeast TIA, the I-84 TIA, the I-91 TIA and the I-395 TIA, with
substantial overlap between the 5 corridors so that many planning regions are in 2 corridors and participate on 2 boards. The Transportation Strategy Board (TSB) itself must submit its Initial Strategy to the General Assembly by Jan. 15, 2002. A Final Strategy is due on Dec. 15, 2002. The TSB’s initial and final strategies will rely heavily on the 5 corridor plans and recommended projects from those 5 plans but the TSB is not bound to accept the recommendations of the 5 TIA boards.’ [e-mail to ANR&P]

**HOUSATONIC RAILROAD**

9 October, Shepaug. _THE BULK TRANLOAD FACILITY IS NOT YET COMPLETE_, said Ed Rodriguez of the railroad [see 15 December 2000 issue]. “We have not finished paving and installing the scale.” The scale turned out to be a long lead time item. But customers have used the facility for a couple cars. [ANR&P discussion]

**NEW HAVEN**

4 October. _AN UPDATE ON PORT ISSUES_ was provided by Marty Tristine of Logistec Connecticut.

**Port authority**

The city has begun the process of implementing a port authority. Per Tristine, it would give the city “more ability to create a port zone and to dedicate port lands to water users.” Karen Gilvarg, “another good person,” is handling this issue.

**Feeder service: planning**

The ‘911’ attack has considerably slowed the effort to start container barge feeder service to Connecticut ports. Bill Ellis, who is handling the Port Inland Distribution Network (PIDN) project for the Port Authority, got out before the World Trade Center towers collapsed. [The daughter of Marty Toyen (he of the consulting work for the Bridgeport study on the feeder service) did not.] Ellis wrote that the attack slowed the PIDN effort.

**Feeder service: funding**

To get dollars to start a pilot feeder service, Connecticut’s new Transportation Strategy Board must select the project from among those recommended by the Transportation Investment Area committees (TIAC). Tristine, who sits on the Coastal Corridor TIAC, said it will recommend it, and he understands that the I-91 TIAC will also. The New London TIAC may become the third to support it. However, state revenues are dropping [see above].

Even if moving slowly, the barge service will “certainly go forward,” underlined Tristine, and “certainly in all three Connecticut ports” eventually. “There’s great interest among transportation planners, and bridge people, and New Haven officials remain interested.”

**Logistec operations**

“We’re starting to feel the economy slow,” said Tristine [see Logistec quarterly report in 18 September issue]. That’s compounded by the effort of the domestic steel industry to show that offshore steel makers are engaged in dumping. [ANR&P discussion 5.Oct.2001S]

**Land swaps and new warehouse**

All parties still intend to do land swaps, Tristine said. Westchester trucking will buy the North Yard for its operations, and move out of its current parcel. Gateway Terminals will buy Westchester’s current site on East Shore Parkway. The city will sell the East Shore Parkway site to New Haven Terminals (operated by Logistec).

The sale of city property needs to go through the Board of Alderman, Tristine said, and other parts of city bureaucracy. This has slowed the swaps, since Logistec needs an “ironclad guarantee” that it will get the city parcel before it can give up the North Yard. The parties could cooperate on an interim basis.

Construction has started on Logistec’s new warehouse, across Waterfront Street [see 3 July issue].

**Rail down Waterfront Street**

The city is paying for the track design. “It’s hard to come to consensus” on the design, said Tristine. “The city has done yeoman work in actually getting it to where it is now.” Consensus is very close. “Dick Miller, the city engineer, has been excellent getting all the pieces in place.”

However, even with a final design, completion is “a minimum of four years away,” Tristine reported. The funding is ready; “the state would not look too smart paying an extra $50 million to put the rail on the new Tomlinson bridge” [see 31 July issue] and then not connect it” to any customers.

The reason for the delay? Since the track will go under the future Q bridge, some Q bridge work must be completed first. Moreover, some takings are involved, and some impingement on a pipeline. [ANR&P discussion]

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**MAINE**

**B&A/CDAC**

28 September, Augusta. _HOW TO PRESERVE CDAC_ was discussed at a meeting in the capitol this day, with a member of the governor’s staff, MDOT Commissioner John Melrose, Acadia Railway representatives Randy Parten and Sergio Portillo, and officials from towns along the route.

**Acadia plans**

The excursion service between Montréal and Saint John would run during the summer once a week in each direction, with a two-day stopover in Greenville each way. The railway has already purchased a closed restaurant to serve as a banquet facility, and invested in renovating the lodging at the Squaw Mountain ski
resort. In return, the resort will house passengers during their stay.

Per participant Greenville Town Manager John Simko, Acadia was not concerned about track speed, believing that passengers would willingly sit on the train for 6-7 hours at a stretch.

**Greenville comments**

Simko found “ironic that the town and the region are stepping forward to make use of, and improve, the rail line” while the system’s financial status is leading to the sale and possible abandonment of the rail line.

He is considering asking surrounding towns to form a group to take their concerns about the rail line to any bankruptcy situation involving CDAC, since a bankruptcy court is required to take into account the public interest when considering railroads.

Simko is delighted that Acadia is “putting their money where their mouth is. They’ve been a great company to work with. They’ve done some real thinking, have a lot of money behind them, and would be a good customer for anyone.” Furthermore, Simko noted, the business would be “good for the state economy.”

He was less than pleased when Melrose responded to a request that the state help. The commissioner only said MDOT would welcome further suggestions on strategy.

“It’s almost embarrassing,” said Simko, that a great company comes in ready to use the rails, and the rails are disappearing.

**More information on Greenville plans**

The current spur [see 31 August issue] is used weekly to load logs onto railcars. The log home manufacturer said that receivers west of the Mississippi prefer to receive by rail. Packaged homes now go by truck to an intermodal facility.

**B&A OATS AND BARLEY**

2 October, Easton. NEARLY A MILLION BUSHELs OF OATS MOVES OUT BY RAIL from Aroostook County every year, via Spruce Enterprise facilities. Clyde Cyr, principal, said his company operates elevators and cleaners in Caribou, Houlton, and Easton, buying from the county’s farmers.

All three locations load rail cars; about 90% of his throughput moves by rail, per Cyr. [If each covered hopper holds 3500 bushels, Spruce generates about 250 carloads a year.] About 80% of that moves to Blue Seal locations. Consequently, Cyr does not want the BAR in bankruptcy.

**Production in rotation**

Aroostook farmers plant oats or barley every third year or so, said Cyr, to rotate the field out of potato production. Potatoes are the main County crop.

**Blue Seal purchases**

Blue Seal receives the oats in Richford VT, Arcade NY, and Hagerstown MD via Brownville Junction and Megantic to Farnham. Bill Whitney, who handles transportation for the company, said the Richford shipments go south via NVR while the cars for Arcade and Hagerstown go to the CP for furtherance. The cars could move Brownville Junction to GRS and to the CSX or NS to New York and Pennsylvania, but probably at a higher cost.

As for the traffic coming from outside New England to Richford via White River Junction, Whitney noted: ‘In truth, there very few cars moving via WRJ and I believe the cost would be minimal to go via another route to come in from the north [Farnham].’

What about using CN out of the County, to Québec and then south to Richford and other points? ‘They could certainly move via the CN but right now there are no existing or proposed rates for this so we don’t know how much it would cost to go this route.’

**Provision of barley to Blue Seal**

The County farmers also supply barley to Blue Seal, using the cooperative Maine Potato Growers. Ray Kilcollins, the marketing agent, said he ships out over 600,000 bushels a year, “as long as I have product.” About 95% moves by truck to New Brunswick and Québec, with a little to Nova Scotia. He does ship by rail to Blue Seal.

Why not more by rail? “The BAR does not have many grain cars, maybe 15.” When the cars go out to the provinces, “they took too long to get back.” Canadian purchasers, on the other hand, will supply their own trucks. He does have one customer in Montréal which will receive either by rail or truck.

And potatoes, on which the farmers make more money? “None are shipped by rail.”

**GRS/SLR**

27 September, Dixville Notch NH GRS HAS PROVIDED 100% ON-TIME SERVICE FOR MEAD in the last two months, reported Brian Sass, general manager for logistics of the Mead Corporation’s Rumford mill.

Sass came from James River and Crown Vantage [the latter sold its mills at Berlin and Gorham, New Hampshire to the now-bankrupt American Pulp and American Paper—see 18 September issue]. He told the participants at the North East Association of Rail Shippers meeting here that he is working with both the SLR and GRS to get his shipping right, meaning “on-time, every time.” Neither railroad, he said has totally solved that problem yet.
The customer by customer approach
Mead ships 50-55% of the mill production by rail, which amounts to “millions of pounds.” Instead of trying to deal with the entire rail shipping problem, Sass is working on the delivery to particular customers. “Eating the whole elephant approach has not worked.”

Talk to the doers
Rather than complain to customer service people about lost cars or slow delivery, and hoping they would handle the problem, Sass has followed the route taken by his product to reach a particular customer, and learned how long the delivery should take, and where the problems lie.

When he finds the problems, he looks for the “doer,” the person with the authority to take care of the problem. For example, he found that cars were getting hung up at GRS’ Rigby Yard—“Rigby now has a new yardmaster, Ed Reardon, who is getting the job done.”

Guilford work
To help getting the cars to destinations, Sass requested that GRS station people in the mill in Rumford to track cars. The people started there recently and produce tracking reports every day. For the last two months, the cars have arrived “100% on time.”

Sass expects Guilford to deal with the railroads who subsequently handle the cars. “I consign the cars to Guilford, and I expect the railroad to ensure they arrive” on time, every time.

SLR work
Mead drays paper to warehouses on the SLR line, particularly Fore River’s warehouse in Auburn. Sass expects the same results from the SLR and CN. [ANR&P coverage]

Atlantic Northeast Rails & Ports
8

The STB did not change its decision that the Town of Ayer could not further regulate GRS’ proposed auto transload facility [see 25 September issue]. The board made this interesting statement:

A balance test between commerce and the environment
‘[W]here section 10501(b) [federal pre-emption] and a Federal environmental statute are both involved, the Federal statutes need to be harmonized. The severity of the likely environmental impacts should be weighed against the severity of the transportation impacts of compliance to determine whether, and how, the various Federal statutes can be accommodated. This is a case-specific and fact-specific determination. One must look at the objective effects (i.e., all of the facts and circumstances) to determine whether the local body’s regulation, as applied, unduly burdens or unreasonably interferes with interstate commerce.’

Having already examined the question, the Board did not change its May ruling [see 18 May issue] that Ayer ‘cannot flatly prohibit construction of the New Facility, nor can it impose conditions that are so onerous as to preclude or unduly restrict railroad operations.’ [STB Finance Docket No. 33971 service date 5.Oct.01]

GUILFORD/MYSTIC WHARF
5 October, Boston. ABANDONING THE MYSTIC WHARF WILL NOT IMPAIR THE ENVIRONMENT, according to the STB ruling this day. It addressed the concern of Massport about adding more trucks to the Charlestown streets [see 18 September issue]:

[Only US Gypsum has used the line recently, and that only 27 carloads per year.] ‘Using a rail-to-truck conversion factor of 4 trucks per carload, [the Section on Environmental Analysis] calculates that on a per day basis, if all the rail traffic is diverted to truck traffic, the abandonment would generate an estimated 108 new trucks per year (216 truck trips assuming an empty backhaul). This equates to less than 1 truck per day being added to area roads during a 240 workday year. This increase will not exceed the Board's thresholds of an increase of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment.’

Other points (from STB citation of GRS application)
- Former rail-served facilities on this line have been converted to other uses, removing the potential for reinstating service at these locations.
- Planned improvements to the Port of Boston waterfront that is served by this line have not taken place, which removes another potential source of rail served customers on this line. The underlying value of the property for development consistent with other uses in the area is significant. The property lines vary in width from 30 feet wide to 70 feet in some locations.
- This line is currently classified as “Excepted Track” pursuant to 49 C.F.R. Section 213.4. In order to upgrade the line to FRA Class One safety standards, approximately 200 crossties would need to be replaced, an at-grade crossing would need to be rehabilitated at the former Amstar facility, and two turnouts would need to be retired. The total estimated cost of this upgrade is $58,500.00. In addition, absent abandonment, the Signal System on the line would need to be upgraded in the near future.’ [STB Docket No. AB-32 (Sub-No. 92)]

Massport response
Mike Leone, head of Massport’s Maritime division, said his agency is working with the Office of Coastal Zone Management and EOTC to respond “within the time frame” to the abandonment. He declined to say what that response would say, but believed it would become available next week. [ANR&P discussion 10.Oct.2001]
HOUSSATONIC RAILROAD

9 October, DC. THE STB GAVE HRRC UNTIL 12 NOVEMBER to submit its final offer of financial assistance to purchase the trackage in Pittsfield which CSXT wants to abandon [see 18 September issue]. The delay was granted because CSXT asked for extra time to submit its information to HRRC.

Ed Rodriguez, executive vice president, said HRRC had already submitted its offer, but “reserve the right to change it” if the CSXT information turned up something unexpected. {ANR&P discussion}

9 October. “NOT A SOUND” HAS BEEN HEARD ON THE BERKSHIRE SCENIC PROPOSAL to use HRRC tracks. Rodriguez said he made a proposal to EOTC some time ago and has gotten nothing back [see 13 March issue]. {ANR&P discussion}

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

29 September, Salisbury. THE MBTA IS PERMITTING THE REMOVAL OF A RAIL BRIDGE over Route One, which will further sever the line between Newburyport and Portsmouth. A committee of the New Hampshire Legislature is studying the revival of the line. The Boston Herald carried an ad this day asking for bids to remove the bridge.

EOTC thinking

Siobhan Norton Perenick of the Massachusetts Executive Office of Transportation wrote that the Commonwealth had ‘no formal plans to date about extending rail services to Portsmouth But there is an agreement between MHD [Massachusetts Highway Department] and MBTA that if rail service is restored to Portsmouth that MHD will rebuild/restore the rail bridge for the MBTA.’ {e-mail to ANR&P 1.Oct.01}

NEW HAMPSHIRE

CCRR: WEST LEBANON

9 October, White River Junction VT. TWIN STATE HAS RUN INTO STRONG LOCAL RESISTANCE to expanding its operations shipping gravel to West Lebanon. The resistance goes back to the initiation of gravel shipping in the early 1990s, which was permitted under the condition that Twin State seek another method.

According to a 1994 Vermont Environmental Board decision granting the permit:

- ‘This permit amends the conditions of Land Use Permit #3W0711, which authorizes the Permittee to continue a gravel and sand extraction operation and to quarry and crush up to 122,500 cubic yards of rock per year for 30 years.’

- [No more than 184 one-way trips were permitted per day per year; the company was required to apply to raise the number.]

- ‘Parties to these proceedings are pledged to a continued effort to identify a way to significantly decrease or remove truck traffic on South Main Street/Connecticut River Road that will allow the Permittee to continue to remain competitive in its operations. It will be their goal to have agreed upon an acceptable solution by March 5, 1996.’ {Case No.3W0711-EB 17.Mar.94}

Request of 2001

Twin State wants to continue to use trucks while beginning trains [see 5 June issue], because the proposed interim spur won’t permit the company to move its current truck volume; only with a permanent spur will that happen, and that will take five years. But citizens sick of the trucks are saying, according to one source, that Twin State has never made good on its 1994 promise. “It’s become a matter of trust and faith.”

Enforcement actions

Twin State is now faced with two legal actions. In June, the local Act 250 coordinator filed a complaint saying that the company is using 14- and 22-wheelers instead of the 10-wheelers permitted. Julie Schmidt, the coordinator, said the complaint had reached the Vermont Attorney General’s Office.

In addition, the Town of Hartford manager, Hunter Rieseberg, said the town (which contains White River Junction) is filing “as we speak” a petition seeking revocation of Twin State’s Act 250 permit. It alleges, inter alia, that the company has not corrected the use of larger-than-permitted trucks. {ANR&P discussions 9.Oct.01}

GRS: SALEM INDUSTRIAL TRACK

2 October, DC. THE STB PERMITTED GRS TO ABANDON MOST OF THE SALEM INDUSTRIAL TRACK. The United Transportation Union (UTU) and the Brotherhood of Locomotive Engineers (BLE) had both filed protests: “BLE contends, and UTU concurs, that B&M allowed “historic deterioration” of the line by deferring maintenance until the line could no longer function. BLE further contends that B&M’s alleged failure to repair a runaround track...further impeded service for Key Packaging. BLE argues that approval of the application is not in the public interest and that the request for abandonment has come about as a result of activities and past conduct by B&M taken in order to receive permission to abandon and discontinue services over the line.’

The Board, however, accepted the GRS analysis that the line had deteriorated over the 70 years of B&M operation to the point that it needed significant rehabilitation. It noted:

‘[T]he line would realize a profit from operations of $57,866 in the forecast year if B&M were to retain Key Packaging’s traffic [$166,668 from 88 carloads of plastic products moved via 52 trains over the line, once a week]. When the return on value is considered, the line shows an avoidable profit of $26,232 in the
forecast year. However, when rehabilitation costs are included, the line would require a subsidy of $365,965 in the forecast year.’

The Board also noted that Key Packaging is using a transload at Fitchburg. [STB Docket No. AB-32 (Sub-No. 90) service 3 Oct. 01] [See decision on STB website for more financial details.]

**RHODE ISLAND**

**RIDOT**

8 October. **RIDOT IS DECIDING HOW MUCH OF THE FRIP TO COMPLETE** [see 27 March issue]. Kazem Farhoumand, head of the project as the state’s bridge design honcho, said RIDOT will complete the Freight Rail Improvement Project south of Providence to at least tri-level auto carrier clearance, and then look at work north of Providence to the Boston Switch. [More in a future issue.]

**NEWPORT SECONDARY**

2 October, Providence. **AN UPDATE ON ACTIVITIES HERE** was provided by Steve Devine of RIDOT’s intermodal planning division [see 10 April issue]. “We’re halfway through the study of alternatives to re-use the rail corridor.” These including doing nothing, keeping the dinner and tourist trains as is, operating a rail shuttle on-island which would eventually connect to Fall River, and looking at a busway with bikepath.

The Sakonnet River rail bridge

RIDOT still plans to take down the existing bridge and keep the piers for a future bridge. The state has decided not to build a rail + highway bridge. [ANR & P discussion 2 Oct. 2001 Steve Devine]

**VERMONT**

**VERMONT RAIL SYSTEM**

26 September, Brattleboro. **THE COURT RULED IN PART FOR GMRC, AND IN PART FOR THE STATE,** on the motions concerning expansion of the Riverside rail-served industrial park in Rockingham. [See 25 September issue–so much for my prognosticating ability. *Editor*].

No referral to STB. Judge Garvan Murtha, chief US district court judge in Vermont, denied GMRC’s motion to refer the question of pre-emption to the STB. ‘Whether Vermont’s Act 250 is pre-empted by the [Interstate Commerce Commission Termination Act] raises constitution questions traditionally resolved by federal courts.’

No dismissal for failure to state a claim. Murtha denied Vermont’s motion to dismiss the case. ‘The ICCTA contains a specific pre-emption provision which requires case-by-case analysis...[W]hether the defendants’ [the state] effort to enforce one or more conditions in the 1997 permit violates the ICCTA in this particular case requires further development of the record, either by a properly-supported motion for summary judgement, or after an evidentiary hearing on the merits.’ [text of decision]

2 October, DC. **VERMONT ASKED THE STB TO DENY GMRC’S PETITION for a declaratory order.** GMRC on 6 June asked the STB to declared state action pre-empted by the ICCTA [see 31 July issue]. Vermont Assistant Attorney General Rebecca Elias attached the 26 September court ruling to her letter, and concluded: ‘The State of Vermont respectfully suggests that the decision of the Federal District Court obviates the need for institution of Declaratory Proceedings before the Surface Transportation Board, and renews its request that the petition of the Green Mountain Railroad be denied.’ [text of letter]

**WASHINGTON COUNTY RAILROAD**

26 September, Barre. **WACR HAS BEGUN TO OPERATE A TRACK EXTENSION** here. Jerry Hebda, VRS vice-president (VRS’ GMRC operates the WACR, part of VRS; WACR owns the public certificate–see 22 November 1999 issue), said the railroad had, on speculation, obtained an agreement from the owner of the extension to use the track.

Some history

In 1948, predecessor railroad the Barre and Chelsea sold the extension. About 1000 feet long, it lies in Websterville past the Bombardier plant, and at one point served the Wells and Lamson quarry there. Successor railroads operated the extension until November 1985.

In 2000, WACR decided to bring the Fulton Company back on line; it is currently transloading its product in Barre at the Barre Yard [see 20 October 2000 issue]. That’s difficult to do, noted Hebda, because Fulton must put its unloader on a lowboy, truck it down to Barre, unload it, use it, reload it, and drive it back up the mountain.

If WACR can bring the car up to the Graniteville track, Fulton can drive the loader and trucks over private haul roads without weight limits. The railroad has rehabbed the track, but Fulton has not yet used it per Dave Neddo of Fulton, “because of the neighbor mess.”

More customers?

The railroad has used the line, beginning 21 August. It has also hauled stone, and will begin serving the abrasives company as soon as the company has an incoming rail car. Now that WACR is reviving the track, several other quarry customers have shown interest in using it. Hebda emphasized, “That’s our mission, to develop new business.”
The NIMBY problem
Because the tracks were last used in 1985, and run literally within feet of the backyards of some homes on Websterville Road, three households have sought means to stop the railroad. Thus far, they have failed.

They tried civil disobedience, which was stopped with a state court injunction. They have looked at STB action, the Act 250 law controlling land use, talking to the town, and fighting a local zoning permit. {Karen Brislin in Montpelier- Barre Times-Argus 10.Aug&1.Sept.01}

The town has since told the objectors that it does not believe the railroad has violated any zoning laws, and the town does not have authority over rail lines.

“We’d like to operate as gently as possible,” underlined Hebda, “with the least disruption to the community. We plan to operate only once or twice a week, in daylight hours.” However, the railroad will not agree to specific restrictions on operating hours, to preserve its flexibility. {ANR&P interview 26.Sept.01}

ASSOCIATION OF REGIONAL RAILWAYS OF CANADA
27 September, Ottawa. THE NEW ASSOCIATION HAS NO EASTERN CANADIAN MEMBERS YET. The Association of Regional Railways of Canada will press for changes to the Canada Transportation Act, which is currently under review by the federal government. The association wants changes to the CTA that would ensure the viability of regional and short line railways and provide shippers with a competitive choice.

The founding members of ARRC are BC Rail, The Hudson's Bay Railway, The Carleton Trail Railway, and Ferroequus Railway Company Limited. The members determined that their interests were best served in a new organization that specifically supports the interests of short line and regional railways. {CNW via NewsEdge Corporation}

Effect on railways in Atlantic Canada
Bob Ballantyne, spokesperson for the ARRC, said it did not want to focus only on western Canada. “We’re approaching short lines and regional railways all across Canada, saying the shop door is open. If you’re interested contact us.” No additional railways have yet joined.

The smaller railways find challenging the Class Is, especially the one they depend on, “very risky. If they do it collectively, they find it less risky.”

But Ballantyne, a former president of the Railway Association of Canada (RAC) emphasized that charter members have good relations with the Class Is and RAC, and want to work together on many issues. {ANR&P discussion 9.Oct.1}

Canadian National
20 September, Montréal. CN IS EXPANDING ITS GUARANTEED CAR PROGRAM TO SHORT LINES. According to a press release this day: ‘The guaranteed empty equipment supply program, first introduced in July 2000, represents a fundamental change in how CN does business with its customers. Car orders are commitments, not forecasts, as was the case in past. Today CN guarantees delivery of empty freight cars on specified “want” dates - dates agreed to with the shipper - in exchange for the shipper's commitment to accept the cars on those dates. The program is backed up by financial penalties for whichever party fails to fulfill its commitment....

‘The program works well - CN has consistently provided between 94% and 99% of guaranteed cars on the shipper's "want" date since the program began last summer.

The program now applies to center-beam flat cars and coil gondolas in Canada and the United States. In Canada it covers double door boxcars, bulkhead flat cars, single-door boxcars, bulkhead boxcars and standard flat cars. This fall CN will expand the program in Canada to grain boxcars, paper/paperboard boxes and miscellaneous car groups. In the U.S. it will apply to flat cars, boxcars and miscellaneous car groups.

According to a letter sent to customers: ‘In the event CN fails to place the car(s) on or before the guaranteed date, you will be credited $100 (US). If you cancel a guaranteed car order, a $100 (US) change/ cancellation fee applies. It is best that the orders be submitted as far in advance as practical, but preferably no later than the Thursday preceding the week for which the cars are needed. Orders are filled on a “first come first served” basis. Cars can be ordered up to six months in advance.’

While a shipper can opt out of the program, CN would like all shippers to use it, said CN’s marketer for New England, Fred Jones. Contrary to reports, participation in the program costs nothing. Customers outside the program will be at a disadvantage. Joining the program does require better planning on the part of the shipper. “Even if you ship only a couple of cars a day, it’s worth it.”

Supply to short lines
The letter to customers also said: ‘For CN customers served by shortlines, CN currently guarantees that the cars are delivered to the interchange with the shortline on time. CN is working with the shortlines to extend the program to the actual loading site.’

Customers on short lines
Mark Hallman, CN spokesperson, said on 25 September that the railroad has memoranda of understanding (MOU) with two short lines to supply customers on short lines: Alberta Rail Net and Goderich and Exeter, the latter a Rail America property. “Once we get an agreement with G&Ex, then we expect the program will spread to other Rail America properties with which CN connects.”

In the Atlantic Northeast, Hallman reported, “NBEC is very interested, we are having preliminary discussions.”
The MOUs with short lines are guided by certain principles: easy to administer, clearly defined benefits, the short line is made whole on costs. Points covered include: reporting and administration, interchange, delivery, demurrage/car hire, mechanical rejects, and liability for failures. {ANR&P discussions 25-Sep.01 and 3-Oct.01; CN press release; CN letter to customers}

CAPE BRETON & CNS
4 October, Sydney. THE REPORT ON RAIL TO CAPE BRETON IS NOT YET FINALIZED, said Don Stonehouse, director of policy and plans for NSDOT [see 31 August issue]. While he could not put a definite date on its completion, he estimated that Bob Stevens would present it to the stakeholders in Sydney in two or three weeks. “He’s still working on leads” to more traffic. {ANR&P discussion}

SAINT JOHN
2 October. KENT LINE IS SELLING ITS BOX BUSINESS TO TROPICAL SHIPPING. According to a press release from Nicor, Incorporated, the owner of Tropical Shipping, “Tropical Shipping headquartered in Riviera Beach, Florida is a leading provider of quality refrigerated and dry container service to and from the Caribbean and Bahamas. Kent Line Container Division, part of the holdings of the Irving family of New Brunswick, has operated since the early 1990s and presently provides weekly container service from Canada to the Caribbean and northern coast of South America. Effective Monday, October 22nd, 2001 Tropical will take over this weekly service, offering Canadian customers an expanded all water service from Atlantic Canada to an expanded network of Caribbean destinations.

“Tropical has more than a 25-year history of handling Canadian exports to the Bahamas and Caribbean region and nearly an 18-year history of operating its own Canadian offices,” said Rick Murrell, Tropical Shipping’s president and chief executive officer. “Our acquisition of the Kent Line Container Division will expand the number of Caribbean ports connected by an all-water service from Canada and this will benefit both the Canadian exporter as well as the Caribbean importers.” {press release}

Volume of containers
Mark Knox, a spokesman for NICOR Inc., the Illinois natural gas utility that owns Tropical, said the acquisition will “take away a competitor” and increase Tropical’s Canadian business, adding about 20,000 TEU annually and $20 million in revenue. Tropical moved 161,400 TEU last year and had revenues of $248 million. Tropical will take over two existing vessels charters from Kent. Tropical will offer service to a broader range of ports in the Caribbean.

The companies did not reveal the purchase price because Kent is a subsidiary of privately-owned J.D. Irving Ltd.

Kent says it “will focus its efforts on growing its breakbulk service to Europe, the Caribbean and South America, operated by a fleet of owned and chartered ships, together with developing its tanker ownership and ship management/agency activities.

The acquisition follows a decision in April by Seaboard Marine to discontinue chartering space from Kent Line. Seaboard had chartered about 20% of Kent Line’s slots.

The sale will result in the displacement of about 21 workers, according to Bob Youden, vice president of transportation. {Chris Dupin in Journal of Commerce On-line 2.Oct.01}