REGIONAL ISSUES

B&A: The latest on bankruptcy and dismemmberment.
SLR: Intermodal running in mixed train.
New York: PIDN announcement by 21 September?

CONNECTICUT
ConnDOT: No definite grants for freight. GRS, CSO got no money.
CNZR: Armory Branch, Home Depot work.
PW: Wethersfield 95% done.

MAINE
Amtrak: Ground broken for layover facility.
B&A: CDAC an orphan? Greenville has a rail proposal.

MASSACHUSETTS
GRS: Massport wants to save Mystic Wharf branch, GRS wants to abandon.

NEW HAMPSHIRE
[No report.]

RHODE ISLAND
[No report.]

VERMONT
NVR: VAOT may buy.
VRS: Map of Rutland Yard, more on moving it. OMYA rail traffic.

MARITIMES/QUÉBEC
MTQ: No grant to B&A.
CBNS: Stevens reports in a month, should look at gypsum move.
Halifax: Traffic down.

EDITORIAL
Why Maine, New Brunswick, Québec, Logistec, and Irving should buy the CDAC.

FROM THE PUBLISHER

Due to the B&A situation, readers get an extra-large issue.

- Chop Hardenbergh

Next issue: 18 September
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comfort knowing that we have a number of reputable companies with an active interest in the line as whole, or in parts of it. We’re not starting from scratch” to find operators. {ANR&P discussions 16.Aug.01}

### US RAILROAD BANKRUPTCY LAW

#### Governing law

All bankruptcy matters are handled by federal bankruptcy courts. The Maine district has two courts: Portland and Bangor. Railroad bankruptcies have a special section in the US Bankruptcy Code, Title 11 of the federal laws. Title 11, Chapter 11, covers Reorganizations (attempts to keep the business going while reorganizing its financial affairs). Under Chapter 11, Subchapter IV has special rules governing railroad reorganizations.

#### Adjudication of bankruptcy

Generally, section 303 of Title 11 on involuntary bankruptcy filings requires that the filing be commenced by three or more debtors. The statute also provides the debtor the right to answer. The Federal Rules of Bankruptcy Procedure, Rule 1011, permit the debtor to contest the filing within 20 days.

#### Interests of other parties

Undersection 1164, Right to be heard: ‘The Board, the Department of Transportation, and any State or local commission having regulatory jurisdiction over the debtor may raise, and may appear and be heard on, any issue in a case under this chapter, but may not appeal from any judgment, order, or decree entered in the case.’

#### Appointment of trustee

Under section 1163, appointment of trustee: ‘As soon as practicable after the order for relief the Secretary of Transportation, and any State or local commission having regulatory jurisdiction over the debtor may raise, and may appear and be heard on, any issue in a case under this chapter, but may not appeal from any judgment, order, or decree entered in the case.’

#### Compensation of trustees

Section 326 specifies that the court ‘may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.’ {various websites}

#### Likely outcome

Following the response of the debtor, the judge will hold a pre-trial hearing, and then a trial if the debtor disputes the bankruptcy

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the line running, should this be required.”

The B&A is important to Irving [but see 13 March issue] and “a lifeline” to a number of other companies operating in New Brunswick and Maine, Keith said. “The twice daily service to Montréal is a vital link for both raw materials to operations and products to markets from northern Maine. Our [J.D.Irving,Ltd.] woodlands and sawmills operations transport wood and wood chips in a north-to-south direction” on the BAR-CDAC.

New Brunswick Southern Railway's interest in acquiring the company, Keith said, was "very limited." {Tali Folkins in Saint John Telegraph-Journal 27.July.01}

15 August, Bangor. **CREDITORS FILED AN INVOLUNTARY BANKRUPTCY PETITION** on the Bangor and Aroostook Railroad Company [BAR—in other words, not for any other part of the B&A System, or for the parent Iron Road Railways].

**The creditors who filed**

Helm Financial, represented by Curtis E. Kimball of Rudman & Winchell in Bangor. Helm contends it is owed $5,740,137 for locomotive leases.

Ebenezer Railcar Services, represented by George W. Kurr of Gross, Minsky & Mogul in Bangor. According to Jeffrey Schmarje of Ebenezer, located in West Seneca New York, the company “repaired some cars for them...quite a few years ago.” His company is seeking $194,153.

Union Tank Car Company, represented by Deborah L. Thorne of FagelHaber LLC in Chicago, seeking judgment for $1,224,496 plus additional charges for mileage, repairs, and other costs under Rental Agreement.

**The next step**

Under US bankruptcy law [see box], the BAR has twenty days to contest the petition. Should the judge grant the petition or the BAR not contest it, a trustee would be appointed to handle the railroad during bankruptcy. USDOT will nominate five names for a trustee, and the US trustee (meaning the assistant trustee for the state of Maine, probably) will select one. The trustee’s fee, by law, cannot exceed a certain percentage of the value of the transaction [see box].

**Comments on the bankruptcy**

Fred Yocum, president of the BAR said he had no substantive comment. “We are taking it under advisement.”

John Melrose, MDOT commissioner, said: “We’ve known that this was one possible outcome for a long time. We will pursue all avenues to participate in the process with the objective in mind of holding the system together, and not seeing an fragmented system” or a partly abandoned system. “If we had our druthers, the whole system would be owned by one company. A good combination of partners that ensures the network we have today remains in active service would be the next best thing.”

He also noted that if the BAR cannot stave off the bankruptcy, the trustee may need to identify an interim operator. “We will have some opinions on that. There’s some
Petition. ‘Broadly speaking, the statutory standard is met if the debtor is substantially overdue on its significant debts.’ The debtor is found equitably insolvent rather than legally insolvent (when debts exceed assets). {Michael Herbert, Understanding Bankruptcy, Matthew Bender 1995}

In the memory of one Maine attorney, only once has a debtor defeated the petition of the creditors. That involved the Orinoco Restaurant, well-known University of Maine students. But BAR attorney Keith Cunningham underscored the fact that legions of involuntary petitions have been defeated in courts around the country.

**Equitable subordination**

According to bankruptcy case law, a court may demote secured creditors to a lower status (‘equitable subordination’) in several circumstances, including ‘those in which a third party, in effect, controls the debtor to the disadvantage of others...[T]he mere fact that insiders have used their power over the debtor to better their own position at the expense of outside creditors...can be sufficient.’

The equitable subordination claim is rarely put forward and rarely won. {Herbert, page 176}

16 August, Chicago. ‘WE’RE NOT PUTTING A HOLD ON OUR EFFORT’, said Ed Burkhardt, principal of Rail World, who is heading the consortium seeking to acquire the Bangor & Aroostook System. “The important thing to remember is that this company [BAR] is not yet bankrupt, technically....

“The company has 20 days to respond. Our effort in intervening 20 days will have some influence on how they [IRR, the BAR parent] view the issue. They have a number of options in their response. A number of scenarios can play out within 20 days.”

“Most unfortunate”

Burkhardt viewed the filing as “most unfortunate. That group of creditors made a serious mistake.” The consortium was negotiating with those creditors, among others. “If we get a standardized bankruptcy with a trustee named, that will take more time and leave less to collect.”

**The consortium response**

Some of the BAR options could be favorable to the creditors, Burkhardt noted. One of them will not come in the form of full payment in the next twenty days, however. Discussions on some form of payment were underway, “but they elected not to wait, and their chances have been reduced.”

The consortium is still working “with the full cooperation of management and the secured creditors,” he said. “They’re interested in such a solution [which will also satisfy the unsecured creditors].

The BAR will make an answer to the court on how to handle this. “The proposal we make to them in the meantime will help them on the answer to the court. “Our effort is to [help the BAR] come in with a plan that will maximize return to creditors.”

Burkhardt declined to provide more details on the options before the BAR, and the consortium’s proposal to IRR. {ANR&P discussion 16.Aug.01}

24 August. THE BAR AIN’T LEGALLY BANKRUPT. According to an affidavit submitted to Maine Superior Court in the Helm case [see 14 August issue] by Karl Ziebarth, IRR financial officer, as of February, B&A had assets of $92.8 million and debts of about $50.4 million.

B&A President Fred Yocum said that the BAR’s assets still exceeded its liabilities, but for two reasons the railroad would not realize the $92.8 million Ziebarth listed.

First, the prices were based on transactions in the ordinary course of business. “With the kind of financial pressure we’re under, we are unlikely to get that much.”

Second, “some assets...need to be operated to fulfill common carrier obligations.” Their value as part of a going concern value is less than liquidation value. For example, Yocum said, a piece of track on an operating railroad which must continue operating may well have, due to low traffic on it, less value to the short line purchasing the track than its value if it were liquidated. {ANR&P discussion 28 Aug.01}

28 August. THE B&A SYSTEM WILL NOT TRANSFER AS A WHOLE. President Fred Yocum said: “No one has expressed an interest in the Northern Vermont (the track from Richford to Wells River and the operating rights from Wells River to White River Junction).” Consequently he is discussing the property with VAOT [see below]. Furthermore, likely no one will buy one part of CDAC, although that was not a certainty.

Québec, CDAC and QSR

SLR President Robert Grossman, reached in Québec, said: “We’re definitely interested in the western part of line,” the QSR and CDAC from Sherbrooke to Megantic. [The latter town has a large waferboard plant, owned by Tafisa, which was predicted to produce about 2000 carloads a year by 2001 after construction of a 1.5-mile spur. See 8 October 1998 issue.]

The Burkhardt-led consortium would like to buy the west end of the system as well, Burkhardt said last week.

Maine, CDAC

Observers agree that CDAC between Megantic and Brownville Junction has virtually no local traffic. And, said Grossman, the haulage traffic moves at “very low overhead rates.”

MDOT Commissioner John Melrose said the state would look closely at buying that part of the line [see Maine].

Maine, BAR

The BAR, with its assets exceeding its debts [see below], looks likely to be sold. Yocum said earlier that a sale of the assets is imminent. {AP in Portland Press Herald 24.Aug.01}

Vermont, NVR

VAOT is negotiating the purchase of the NVR [see Vermont].
28 August, Portland. **THE JUDGE DENIED HELM’S ATTEMPT TO GET A COURT OK for any asset sales of the BAR.** On 17 August, Helm Financial, represented by a second Maine attorney Daniel Cummings of Portland, asked the Court to halt the sale of any property outside the ordinary course of business without court approval.

Judge Haines of Portland took over the case from the Bangor judge, who recused himself because he formerly worked at Gross Minsky, a law firm representing Ebenezer Railcar Services. Haines heard arguments on the motion via a telephone conference call, with 10 attorneys (including one from MDOT) and two journalists (your editor and Deborah Turcotte Seavy of the Bangor Daily News) on the line.

**Helm arguments**

Cummings said to the “knowledge and belief” of his client, the B&A is selling off assets, but “it’s difficult to get information on whether the B&A is receiving reasonable value, and on where the funds are going.”

As an example, Cummings cited the deal with CN getting access to Fraser Paper [see 27 March issue] which involved a 99-year lease and a $5 million cash payment. [A source close to the deal said it involved transforming revenue division into a haulage fee.] “We’re concerned that the entire transaction may not have been reported to the Board.”

Second, Cummings argued, the fact that all assets are covered by liens “does not address all creditors” [such as Helm, an unsecured creditor]. Moreover, it does not address the public interest of preserving an intact railroad.

**B&A response**

B&A Counsel Keith Cunningham acknowledged that the railroad “is working to sell all assets.” The “very long sale process has now winnowed down potential buyers to a very small group. Helm has been informed all along” about the process. Any sale would undergo the “STB 60-day notice process” giving notice to all creditors. Secured creditors are protected by liens and so forth.

Moreover, the B&A expects to receive “formal sale term sheets in the very near future, perhaps September 7th or earlier.” [Sale term sheets have a list of the principal components of the railroad. Editor]

**Ruling in favor of railroad**

Following the arguments, which consumed about 10 minutes, Judge Haines ruled immediately: In light of the scant evidentiary evidence [showing anything untoward happening], the fact that an order stopping sales would be extraordinary relief until the debtor is adjudicated a bankrupt, the statute 303(f) stating that unless ordered otherwise, the debtor may continue to use or acquire [property] as if the involuntary filing had not occurred which takes into account non-ordinary sales, coupled with STB oversight, the protection afforded to movant by liens, and the ability to proceed under section 549 [recovering value improperly transferred] after an order for relief is entered, the motion is denied, without prejudice if new evidence emerges.

“See you at the pre-trial conference,” the judge concluded.

{ANR&P coverage via telephone conference call}

29 August. **IMPACT ON PORTS OF THE B&A DENOUEMENT.** While the possible closing of some of the railroad affects domestic shippers, it will also affect immediately at least three ports, two in the region:

**Searsport.** Rail traffic had already fallen considerably, and the transition should not further affect it [see Maine]. MDOT has agreed to purchase BAR property there for $1 million.

**Saint John.** The Port Authority has consistently stated that it places high value on the rail connection provided by NBSR and the B&A to Montréal. [See Québec -Maritimes.]

**Montréal.** The B&A does carry traffic which goes to the port.

30 August, Bangor. **CREDITORS AND OTHERS ARE FILING AN APPEARANCE** to monitor the situation, according to the court’s website. Filings of those who list themselves as creditors do not include a statement of whether the BAR owes anything:

- **Residual Based Finance Corporation,** aka Residco. Counsel Steven Cope of Portland.
- **Great Northern Paper,** appearance as a ‘party in interest’. Counsel Kevin Beal of Lewiston said later that his client is not currently owned any funds but wants to keep apprised of the process. {ANR&P discussion 29.Aug.2001}
- **NBSR and Eastern Maine Railway,** appearance as ‘parties in interest’ and ‘creditors’. Counsel Andrew Cadot of Portland.
- **Irving Oil,** appearance as creditor. Counsel Michael Haenn of Bangor.
- **Bank Austria,** appearance as creditor. Counsel John Mairo of New York.
- **Cayuga Railway Company,** no reason for appearance. Eric Lee of the company lists himself.

Documents filed with the BAR’s opposition to the Helm motion [see below] also showed the IRS had a lien for $983,000, and the State of Maine for $103,000. {website}

**Status of Bank Austria**

An affidavit of Bank Austria, submitted in the Helm case in Maine Superior Court, showed these facts:

‘On August 12, 1999, Bank Austria entered into a sale/leaseback transaction with the railroad, its affiliated companies, and the parent company’ under which all tracks on property owned by the railroad were sold to Allfirst First Financial Center as trustee [proceeds of the sale went to pay off earlier financing]. The trust was funded with a loan from BA [Bank Austria] Finance of $23 million and an equity infusion of $9.5 million from Progress Rail Services. The trust then leased back the tracks to the BAR, Canadian American Railroad, and Newport and Richford Railroad Company.’

BAR also granted the trust security in all of its property. Bank Austria also made a separate $2 million term loan to the railroad. As
of 1 February 2001, the railroad owed $23,250,000 on the first loan, and $1,750,000 on the term loan.

Should Bank Austria lose secured status?
Helm Financial appears to want to make this case [see 14 August issue], due to Bank Austria/Progress Rail control [see box]. Barbara Wilson, senior vice-president and chief financial officer, said on 29 August that Mike Rizzo, an outside consultant, was put in place by Progress Rail to vet all checks signed by BAR. Another source close to the bidding said that Marc Goodman, another consultant, was supervising all asset sales. Furthermore, Yocum came from Progress Rail.

IRR President Bob Schmidt contested those characterizations.

Fred Yocum, president. Yocum joined the Iron Road Railways board in 1999, when Progress Rail purchased preferred stock of IRR [see 27 August 1999 issue]. Although he had consulted with the B&A earlier, he joined the board as Progress Rail’s representative. He became president of the B&A System on 20 February 2001. [See 27 February issue.] Schmidt said the board found him the most qualified to do the job until the system was sold or re-organized.

Mike Rizzo. Schmidt said Rizzo had started his duties before the 1999 refinancing. Karl Ziebarth, IRR’s chief financial officer, said Rizzo served as “a financial consultant retained by IRR and its subsidiaries in various tasks,” including negotiating with creditors secured and unsecured.

Marc Goodman. This official oversees asset sales by the B&A. Ziebarth described him as a consultant experienced in asset sales in difficult financial situations. He is retained by BAR.

Both Rizzo and Goodman work for RAS Management, a consulting firm in Boston which assists companies in financial difficulties. {ANR&P discussion 30&31.Aug.2001} [Moreover, Progress Rail is not a secured creditor.]

31 August. NEXT STEPS?

Bankruptcy proceedings
BAR must file a response to the petition by 6 September, 20 days from the date of service. After that, the judge will schedule a pre-trial conference, and then hold a hearing on whether to declare the BAR equitably bankrupt [see box].

BAR attorney Keith Cunningham told the court in his statement in opposition to the Helm motion [see 28 August above] that ‘B&A intends to object vigorously to entry of an order for relief.’

Sale proceedings
Cunningham also told the court that his client expected a formal offer by 7 September. At that point, IRR President Robert Schmidt said, the B&A and the offeror will sit down with all creditors to see who would get what out of the deal. {ANR&P discussion 31.Aug.2001}

[Presumably, offers on NVR, QSR, CDAC, and LMS will come later.]

SLR
30 August. THE SLR IS RUNNING A MIXED TRAIN between Auburn and Richmond, Québec. Emons chief Robert Grossman said following CN’s service reduction from two trains to one in 2000, SLR had continued to run one intermodal and one merchandise train for some time.

But with traffic softening, new SLR President Michael Chilson [see 5 June People] found he could cut costs and still provide excellent service by running only one train. {ANR&P discussion}

NEW YORK
30 August. “IF WE’RE LUCKY,” AN ANNOUNCEMENT ABOUT PIDN SERVICE could come by 21 September [see 20 July issue]. {e-mail to ANR&P from Bill Ellis, PA NY/NJ}

CONNECTICUT

CONNDOT
30 August. CONNDOT WILL CONSIDER FREIGHT GRANT REQUESTS for this fiscal year, even though it has no budgeted funds for the rail grant program. Ray Godcher, supervising planner in the Division of Rail Planning and Programming, said “the bond program is oversubscribed with commuter service needs,” and has not done anything since the beginning of the year for freight railroads [see 30 January issue].

The department has done no solicitation. “We’re telling railroads, ‘If you have a viable project send it in, and we’ll try to shoehorn it into budget.’” The budget constantly shifts as the year goes. “If you sent a project that took 10,000 trucks off I-95 for half a million dollars, we’d probably find that [money].”

The 2000 program
This allotted funds to each railroad. Godcher said GRS has not yet presented its request, and the department never finalized the deal with CSO. {ANR&P discussion}

CENTRAL NEW ENGLAND
21 August, Hazardville. THE RAILROAD COMPLETED A GRADE CROSSING here, of Route 190, on the Armory Branch. [In 1998, ConnDOT’s Ray Godcher said the state was supplying assistance for the grade crossings on the long out-of-service 4.5-mile section between Broad Brook and Hazardville (abandoned 1976), and a more recently out-of-service 3.65-mile section between Hazardville and the state line—see 98#16—(abandoned 1986 from the north)].

In 2000, the company announced it would reopen the rail line through Hazardville to provide freight service to northern Enfield. During the past year, workers have been clearing brush and small trees that had overgrown the track bed in northern East Windsor and southern Enfield. {www.ctnow.com}.

In January, ConnDOT awarded some grant money forties on the line [see 30 January issue].
On 30 August, Jim Fox [see PW] said the railroad had completed 95% of the work paid for by the state, renewing six grade crossings. Belliveau told him CNZR is seeking shippers, which are hard to sign on until they see that the train can actually come through. [One such could be the Lego headquarters and manufacturing facility in Enfield, not now served by rail. Editor] {ANR&P discussion}

30 August, Bloomfield. THE LOADING DOCK FOR HOME DEPOT IS ABOUT HALF DONE, said Fox [see 30 January issue]. It requires a cap and a ramp.

Other grade crossings
Belliveau will start up on several other grade crossings on the Griffins line, said Fox: Day Hill Road, Cottage Grove Road (Route 218) and Park Avenue (Route 178) in Bloomfield, and Plainfield Street in Hartford. {ANR&P discussion}

PROVIDENCE & WORCESTER
30 August, Wethersfield. THE REBUILD “LOOKS BEAUTIFUL”, said Jim Fox, who is handling the project for ConnDOT’s maintenance of way division in the Office of Rail. He conducted the penultimate hi-rail on 29 August, and called the secondary 95% done, with the stretch near Hartford needing a stone dump, surfacing, and final alignment. {ANR&P discussion}

MAINE

AMTRAK
30 August. NNEPRA HAS BROKEN GROUND on the last major item needed before Boston-Portland service can begin: the train layover facility near Sewall Street. {e-mail to ANR&P from Bill Epstein, Amtrak spokesperson}

B&A SYSTEM: CDAC
28 August, Augusta. THE STATE IS DEFINITELY INTERESTED IN INVESTING IN THE RAILROAD to preserve it according to MDOT Commissioner John Melrose: “to maintain the competitive situation. Not to help the railroads, but to help the railroad’s customers. We don’t want the lack of competition in rail access to be a deterrent for doing business in Maine.”

He understood that BAR purchasers wanted to keep two routes out: one via Guilford, and another either via CN or CDAC. If the buyer wanted CDAC, it would not buy the trackage from Portage to Fort Kent.

He listed two other reasons to invest in the rail lines. The Legislature in the 1980s enacted a statute requiring the state to preserve the rail network. And finally, preserving rail competition will support the considerable investment the state has made in rail and port structures. Melrose ticked off the Searsport piers, the Loring Commerce Center, and the intermodal facility in Presque Isle as investments which could be compromised without competitive rail access.

Funding could come from a revenue bond, which “goes to the core of why the state would buy it. We need to know that keeping the line open would access enough revenue” to make sense. He would look for some partnering arrangements if the state took on the line.

In particular, Melrose would like to ensure rail access from Searsport to Montréal [see Editorial]. For any operator the state found for the CDAC line, MDOT would like ensured access from Brownville Junction down to the port. {ANR&P discussion 28.Aug.2001}

30 August, Greenville. THE TOWN HAS AN AMBITIOUS RAIL DEVELOPMENT PLAN for both passenger and freight. John Holden, an official at Eastern Maine Development Corporation in Bangor, is working with town officials to flesh it out and find funding.

Passenger
Greenville Junction, where the old depot is located, will become a layover point for the Acadian tourist train [see 3 July issue]. Plans tentatively including moving the current logging transload site at the junction, improving the depot, and providing other commercial opportunities to serve tourists.

A representative of the Acadian suggested that his company might be willing to invest $25,000 in the renovation of the station, Town Manager John Simko said.

Freight
The town would move the transload operation to a new spur in the nearby industrial park. The spur would also serve two existing facilities: Greenville Steam, a chip-fired power plant; and Moosehead Cedar Log Homes, whose owner has said publicly that his fastest growing market is on the west coast. Holden said Moosehead or other firms might use rail both inbound and outbound.

EMDC and Piscataquis County Economic Development Council, which Holden serves as a part-time executive director, envision a wood composites industry, with a business incubator in the industrial park along with wood composite manufacturers.

Procedure
The stakeholders have met with the Office of Tourism and MDOT’s Allan Bartlett. They hope to meet with the Acadian people during visit in the next couple of weeks, Holden said. They have made no formal funding applications, examining sources such as EDA (Economic Development Assistance) or CDBG (community development block grants) available from the state Department of Economic and Community Development. The town did receive a $10,000 CDBG planning grant for a study of the revitalization of the junction area which includes the Depot Street station.

The future
Holden is well aware of the fragile future of the rail line. “We are very interested in keeping the line whole, and in working with whatever firm or organization is in a position to help do that.” The stakeholders want to provide traffic to the railroad to help make it
viable. {ANR&P discussion; Diana Bowley in Bangor Daily News 29.Aug.01}

**SEARSPORT**

30 August. **UPDATE TO THE 1999 DEAL AMONG SPRAGUE, THE B&A, AND THE STATE** was provided by Brian Nutter of MDOT. In August 1999, MDOT, Sprague, and the B&A announced that Sprague would operate both piers: its own, and the B&A’s. The deal, as completed in November 1999 [see 12 November 1999 issue], and an update by Brian Nutter of MPA:

**B&A pier** BAR sold its pier to Sprague for $2 million, and Sprague sold it to the Maine Port Authority (MPA) for the same price. MPA planned to spend $12 million to demolish and rebuild the pier for dry cargo, and another $250,000 for a fendering system. Completion was anticipated for 2001.

Merrill’s Marine Terminal would operate the new pier for break-bulk, while a unionized operator would handle containers. [Seaport was once considered for a major intermodal terminal by Ted Michon, the first person hired (and fired) by IRR as president of the system.] Irving had leased the right to use the pier to offload petroleum products to its tank farm [see 13 August 1999].

Nutter said the bid documents should be finished shortly, and the project will go out to bid. No dry product is currently moving over the pier.

**Sprague pier** MPA will provide $2 million to Sprague to rehab the existing facility to handle liquid cargo. Sprague is currently managing the project of moving the intake pipes for the Irving Oil tank farm and the US defense tank farm [see 14 August issue] from the B&A pier to the Sprague pier. Work should begin shortly, Nutter said.

[Sprague continues to receive bulk products over its original wharf. With the loss of coal for Bucksport, coal no longer arrives, and with the closure of the federal tank farm, petroleum products no longer arrive for federal use.]

Sprague continues to operate its own tank farm. Gene Jones of Sprague said the BAR continues to move out residual (#6) oil to one major account. Within the past year, another major Sprague account switched from rail to truck.

**Upland sale to Sprague**. MPA loaned $2 million to Sprague to purchase 12 acres around the B&A pier, about nine of which lie underwater.

**Upland sale to MPA**. MPA will buy some land from BAR for $1 million, using bond money [to satisfy a 1994 commitment that MDOT would provide $3 million to BAR—see 9 June 1999 issue]. Nutter said the railroad and MPA had agreed on the land: that under two Irving tank farms, currently owned by the BAR.

However, the state has suspended the deal, awaiting resolution of the B&A financial situation.

**Affect of bankruptcy**

In addition to customers switching to truck, and postponing the sale of the tank farm land, what affect could the change in hands of the railroad have? Jones saw no significant drop in railroad traffic in recent months. “We can make alternative arrangements” if the railroad stopped. However, he was confident the transition will work its way through. {ANR&P discussions}

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**MASSACHUSETTS**

7 August, DC. **THE STB REJECTED GRS’S FILING TO ABANDON THE MYSTIC WHARF BRANCH.** During the winter, GRS embargoed the line, and then lifted the embargo [see 10 April issue].

On July 20, 2001, the Boston and Maine Corporation (B&M) filed an application for permission to abandon a line of railroad known as the Mystic Wharf Branch extending from milepost 0.00 to milepost 1.45, a distance of 1.45 miles, in Charlestown, Suffolk County, MA. The application will be rejected for failure to comply with the Board’s abandonment regulations at 49 CFR part 1152.1

...These regulations require that an applicant submit revenue and cost data for the subject line, with documentary support and explanations of the assumptions and rationale for the calculations. 49 CFR 1152.22(d)(2).

The economic data contained in B&M’s application is inconsistent and unsupported. B&M states that 48 trains operated over the line during the base year and that only 27 carloads of sand and gypsum moved over the line during the same time period. Assuming that at least 1 carload was transported per train, the operation of 21 additional trains without accompanying carloads is not explained.

B&M further states that the 27 carloads weighed 2,024 tons. However, when describing the traffic of the sole shipper on the line, United States Gypsum Company, B&M states that the 27 carloads amounted to “tonnage” of 23,534. This discrepancy is not explained. The stated tonnages for 1999 and 2000 are also not explained. In addition, applicant’s exhibit B, at page 7, shows total freight revenues attributable to the line for the forecast year of $21,689, but states that total revenues attributable to the line would be $21,723. This difference is not explained. Absent an explanation for these discrepancies, the application is inconsistent on its face and insufficient for a definitive analysis.

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1 Rejection is without prejudice to filing a new application in compliance with 49 U.S.C. 10903 and the regulations at 49 CFR part 1152. A new application must have a new subnumber and be accompanied by a new filing fee.

2 B&M did not submit work papers and supporting documents as part of its application, as required by 49 CFR 1152.22. Work papers and supporting documents assist potential protestants in challenging the data in the application. Furthermore, the omission of work papers and supporting documents limits the Board’s ability to conduct an economic evaluation of the data. The burden is on the applicant to show that the proposed abandonment is in the public interest. Abandonment Regulations, 1 S.T.B. at 906-07. In any future abandonment application, B&M should submit sufficient
Massport opposition

Michael Leone, director of the maritime division of the Massachusetts Port Authority (Massport Maritime), wrote to the STB on 3 August, after receiving notice that GRS had filed for abandonment. He expressed concern, noting:

Massport currently owns four maritime properties that abut the Mystic Wharf Branch:

- Moran Terminal - an approximately 60-acre former container terminal that is presently used by the Boston Autoport for automobile import and processing;
- Mystic Pier 1 - an approximately 5-acre site including a covered storage shed that is currently used by the Boston Autoport;
- Mystic Piers 48/49/50 - a 3-acre bulk cargo terminal currently used to import, store and distribute road salt; and
- Medford Street Terminal - a 14-acre multi-use marine terminal currently used to import and stockpile construction materials as well as for an extension of the Boston Autoport.

Although none of these tenants use the rail line at this time, they could in the future, depending on the direction that their businesses grow. The availability of rail provides business growth opportunities that would not otherwise be available or would be associated with higher levels of environmental and community impacts (e.g., increased truck traffic).

Without an active rail line to the site, for example, Boston Autoport will have great difficulty attracting an automobile export account. In addition, when Boston Autoport and the other tenants vacate these properties, the availability of rail will greatly enhance maritime-related redevelopment opportunities for the terminals. In fact, the two most recent inquiries we have had regarding future redevelopment of Medford Street Terminal were both contingent on availability of rail service.

In addition to Massport’s properties and tenants, the BMC line actively serves U.S. Gypsum, a company that imports gypsum and uses it to manufacture wallboard and related products. Although the BMC filing does not provide any information regarding the impact on this company, elimination of rail service along the Mystic Wharf Branch will undoubtedly affect their business and increase truck traffic through a densely developed and highly congested area of Boston.

The Port of Boston is currently at a major competitive disadvantage compared with other east coast ports because rail service to so many of our marine terminals has been discontinued over time and, once discontinued, is virtually impossible to restore. Without the option to transport cargo to and from marine terminals via rail, it is becoming increasingly difficult to attract new business or even retain current accounts that need access to a variety of intermodal transport options. In addition, because all of our facilities are located in highly congested areas within the City of Boston, growth that must rely solely on trucks to transport cargo to and from the terminals raises significant environmental and community concerns. For these reasons, I respectfully request that you and BMC strongly reconsider the proposal to abandon and discontinue service along the Mystic Wharf Branch.

Effect on US Gypsum

Plant operation would not be affected by the abandonment, said John Mandel, spokesperson for US Gypsum at Chicago headquarters. The plant gets three different types of raw material by rail, but “it’s not a huge volume. We’re looking at other alternatives, such as transload farther up the line.”

A possible customer: Lafarge Cement?

Until 1987, the branch was far busier with outbound traffic from the Blue Circle Cement (now Lafarge Cement) facility on the Mystic River. According to one official there, “we used rail four to five times a week, amounting to 20 to 25 carloads a week.” It receives cement via barge from a Lafarge site in upstate New York.

In late 1986 to early 1987, the cement receivers changed to truck from rail. The official ascribed the move to getting the cement “a little quicker but a little more expensively.” Perhaps a subtext here: The official also reported that Teamster union members struck the plant at that time, the same time that Guilford rail workers were out on strike. Editor] Most receivers use their own trucks.

The plant, according to the official, may “move more cement than any plant on the East coast. We move 3000 tons a day, on a good day 4000 tons.”

VERMONT

NORTHERN VERMONT

26 August, Montpelier. VAOT IS NEGOTIATING THE PURCHASE OF THE NVR, said Charlie Miller, director of the rail division. “Once we have this [63 miles of track] in our possession, we will try to find an operator who will build traffic on the line.” Traffic on the line has slowed to one freight train a week, the minimum required under Northern Vermont’s contract with the state to allow it to keep using the state-owned track.

Miller acknowledged that the line north from White River Junction to Newport might be difficult to promote. Three other rail lines act as “bridges” between Canadian ports and points south; Boston & Maine officials said that the line wasn’t financially viable when they stopped using it in 1995. “Without some kind of movement as a bridge line, I’m not sure the long-term viability of the line (north of White River Junction) is guaranteed.” Moreover, the tenuous nature of the service, which was halted entirely from 1995 to 1999, and the current problems, could make customers shy away from relying on trains, Miller said.
Comments from one receiver
Twin State Fertilizer in Bradford has been the only business on the state-owned line between White River Junction and Wells River to receive materials by rail. "The state and the company have assured us that we will continue to have service," said Keith Trischman, who runs the fertilizer plant owned by his father, Craig. Twin State gets shipments every couple of weeks, he said, although trains still go by once a week to bring freight cars to be picked up by another railroad in White River Junction. Trischman said he would like to see the trains keep coming. "We're hoping the state comes up with something." {Alex Hanson in Valley News 26.Aug.01}

VRS interested
David Wulfson, chief of the system, said on 29 August that he is "interested in looking anything we can look at." [GMRC made a strong bid to operate the Wells River-White River section when AOT put it out to bid.] But he was unsure if the NVR was viable. VRS "looked at a lot of things a year and a half ago, but the world has changed."

For instance, a new MacIntyre oil terminal, "when I was involved," was going to be in Bradford but went to White River Junction. "And we had other things cooking.... "Would it support itself as a continuous line? It might become only a spur." {ANR&P discussion}

VERMONT RAIL SYSTEM
15 August, Rutland Town. MOVING THE RUTLAND RAIL YARD CONSISTS OF THREE SEPARATE PROJECTS, according to the study by Vanasse Hangen Brustlin presented to the public here: the railyard itself, a new GMRC connector, and a new CLP connector.

Existing railyard
This would move directly south from its current location, and expand from the current 48 acres to 78 acres. The new yard would bring together the two parts: the major portion along the VTR tracks toward Bennington and a minor portion along the GMRC tracks to Bellow Falls.

As the study noted, ‘[O]nce a community that embraced the working switching yard as a source of income and community character, [the neighborhood] now finds the sight and noise of the switching yard a detriment to their community.’

Traffic expansion
The railroad reported to VHB that roughly 200 cars pass through each day, normally via interchange. In addition, somewhere between 500 and 1500 [estimate by editor from VHB study] originate or terminate. ‘Due to the lack of capacity at the existing site, however, the introduction of new customers to the railroad, or increasing the rail traffic of the existing customers, has been constrained.’

OMYA issued a chart at the hearing showing that its growth alone would max out the yard in 18 to 24 months [see below], according to the study’s leader, David Wilcock.

New railyard
VHB suggests two different layouts for the new yard space. Both would allot the former VTR right-of-way to an access road [see below].

Concept 1. This would shift the alignment west somewhat, and use the former alignment for a truck access road. Sites for new rail customers would become available between the railyard and the access road. The new main line would cross above Route 4 and rejoin the present main line about a half mile south of Route 4. Cost: $70 million

Concept 2. This would place the yard directly adjacent to the existing alignment, and locate the industrial development sites away from the primary access road, requiring ‘additional on-site roads and grade crossings.’ It too would require grade separation at Route 4 because switching operations need that much track south of Route 4. Cost: $45,000,000.

Moving existing railyard customers
The Rutland Redevelopment Authority will now examine how to reuse the existing yard. Some space will still be used for rail purposes. For example, the CLP wye will remain so Amtrak can turn its trains. And, as the study noted: ‘Given the recent investment in, and the success of, the MacIntyre bulk transfer facility in Rutland, operations will continue when the rail yard moves.’

Wilcock said the other customers had not yet formally been asked about moving.

New access roads
VHB proposes creating better truck access to the existing industrial park to the north of Route 4 and east of the VTR line (the Randbury Road area) and to the Howe Center, by using the existing ROW of the VTR north of Route 4. VHB also suggests eliminating the GMRC ROW north of Park Street.

Howe Center Connector
This will enable GMRC trains to avoid running onto VTR trackage and then backing into the yard, or vice-versa. VHB provided three layouts differing only in the degree of curvature. Cost: $1.4 million. At this point nearly all GMRC trains begin or terminate in Rutland Yard.

As a result of public comments, the city wants VHB to lay out an additional connector which will permit GMRC to run directly to Center Rutland, when its main line is superseded by a road.

Center Rutland Connector
This will enable trains on the CLP or VTR to avoid running into the yard before proceeding directly between Whitehall and Burlington. VHB provided three alternatives. Concept 1, using the former CLP for some distance and then connecting to the VTR, is estimated at $7.2 million. Concept 2 uses the former CLP up to Business Route 4, then crosses that road and Otter Creek; it would cost $6.8 million.

Concept 3 minimizes track length to 0.3 miles but uses a trestle over Otter Creek and Business Route 4. Cost, $14 million. None of
the three estimates includes land acquisition or environmental mitigation. [See 20 July issue for more detail.]

At this point, said Wilcock, most CLP/VTR trains do some interchange in Rutland Yard. VRS estimates with the new connector it can divert 30-40% of the traffic from Rutland Yard.

**Intermodal facility**

VHB looked at the feasibility of trailer-on-flat-car (TOFC) or container (COFC). Rutland has a central location but suffers three impediments. First, several other TOFC/COFC facilities already operate within easy distance from Rutland. [Montréal, Albany, Palmer, Springfield.] In general, the area within a 250-mile radius of an existing intermodal facility is considered to be effectively served. Second, the cost of trucking freight directly to the intermodal facilities, which are the portals to long-haul rail routes, is less expensive and time-consuming than the rail connections needed to reach the long-haul routes [CLP-D&H, GMRC-NECR-CSXT, VTR-NECR-CN]. Finally, overhead clearance issues pose a problem for double-stacked container rail shipments.

**Next step**

Wilcock said VHB will first incorporate the changes suggested in the public period:

- Lay out the new track on the west side of the Howe Center a bit more to the west, which will help with the GMRC connector curve.
- Scale back the yard layout (VHB did a maximum density), but leave room for expansion.
- Look at the Center Rutland concept 1 to see if really feasible, in response to concerns from Center Rutland inhabitants.
- Estimate the cost of a grade separation at Business Route 4 for the Center Rutland concepts 1 and 2, in response to railroad concerns.

Then, said Wilcock, “we’ll get into environmental study,” which should take 12 to 18 months. **[ANR&P discussion 28.Aug.01; text of study]**

**The VRS view**

David Wulfson, president of VRS, said his railroads were working with Matthew Sternberg and local politicians. “We’re in favor of it, it’s a necessity for the future.” Traffic is growing, with GMRC trains, OMYA, and others. **[ANR&P discussion August 29, 2001]**

29 August. **OMYA COULD USE A TRANSLOAD FACILITY**, according to Erik Bohn.

**Traffic growth**

A table handed out during the hearing on the Rutland Yard showed projected volumes and car increases. It assumes that OMYA is permitted to increase the number of trips from the Middlebury quarry to the Procter processing facility. Act 250 currently constrains the truck volume, and OMYA would like to use rail.

OMYA already ranks as the state’s largest rail shipper.

**New transport means**

OMYA has strengthened about 20 conventional boxcars with inside walls to minimize damage in movement to bulk ‘supersacks’ and palletized bags. Bohn said the shipper did the work itself, at the cost of about $10,000 per car, or subbed the work out.

The cars belong to the railroad, but move in dedicated OMYA service.

OMYA also uses containers and trailer-on-flat-car (TOFC). These are loaded in Procter and drayed 85 miles to Albany, because Vermont does not have an intermodal facility. Bohn would like to look at such a facility in Rutland—a much closer dray—or Procter.

**The Middlebury quarry**

No update, said Bohn, due to the summer. Ditto for the possible Danby quarry. **[ANR&P discussion]**

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**QUÉBEC / MARITIMES**

**MINISTERE TRANSPORT QUÉBEC**

30 August. **MTQ DECLINED TO PROVIDE A GRANT TO THE B&A** in the past. Andre Kawa of the rail division said that the B&A’s Québec Southern did apply, but it was not paying its bills or taxes, and couldn’t provide the match.

**Subsidy for future owner**

‘As for the subsidies it’ll be business as usual; this means that the future operator will get what is already planned in the Rail Rehab Program,’ about $2 million. Under the program, ‘a maximum of $5600/km for each shortline rail company may be granted for projects to rehabilitate the track and structures or to construct sidings [over a four-year period beginning in 2000].... Applicants must ensure at least 50% of the cost of the project in order to obtain a subsidy. A maximum of 25% of the total annual budget of the program may be granted to the same company during a given fiscal year.’

[Since QSR has about 158 miles, and the $5600/kilometer means nearly $10,000 per mile, the future owner of QSR could obtain about $1.5 million if it provided the same amount in a match. **Editor**]

In July, MTQ announced that SLQ had received a grant of nearly $200,000. **[for full text of communique, see http://www.mtq.gouv.qc.ca/ministere/communiques_ministere_en.htm]** [More in a future issue.]

Kawa noted that federal railroads as well as provincial railroads are eligible. Therefore CDAC could also receive grants. **[ANR&P discussion]**
CAPE BRETON AND CNS
30 August, Sydney. Stevens will produce a report “within a month” or so, according to Don Stonehouse, head of transportation policy and planning at NSDOT [see 14 August issue]. The 24 August date given by Brad Hodgins, NSED project manager, for a report was only a “tentative schedule.” Stevens has met with the stakeholders, and will meet with them again with his report in a follow-up session in Sydney (not open to the public, Stonehouse believed).

The report will then go the ministers (Ron Russell of NSDOT and Gordon Balser for NSED) for their consideration, Stonehouse said, and for a government decision. Stevens could be asked to work on a second stage, to delve more deeply.

Gypsum move worth a look
Stevens will be looking at all possible rail developments, according to Stonehouse. “It would behoove us to do so,” including considering whether putting the future truck haul of gypsum into rail cars from Melford to Port Hawkesbury. {ANR&P discussion}

HALIFAX
15 August. Container traffic has declined. Figures for the first six months of 2001 show an increase of 1.3% in container tonnage, and a decrease of just under 1% in TEUs. Imports increased 5.1% to 923,750 tonnes (1.4% increase in TEUs), but exports declined 1.3% to 1,271,560 tonnes (2.9% decrease in TEUs).

In other categories, bulk rose 5.6% to 4,562,570 tonnes, while ro-ro (97,100 tonnes) and break-bulk (73,180 tonnes) each declined just over 30% compared with the same period the previous year. {Port Authority web site, Port at a Glance, Facilities and Cargo, scroll down (whew!)}

Patricia McDermott, vice-president of marketing for the Port Authority, said that shipments of forest products declined 93%, and made up much of the break-bulk exports. In 2000, the port moved locomotives to Great Britain; that traffic has stayed steady this year, but should pick up in the second half. “Generally speaking, people are becoming more optimistic about cargo flow.”

Better than similar Canadian ports
Both Vancouver and Montréal experienced bigger drops during the first six months of 2001. {Tom Peters in Halifax Herald 17.Aug.01}

Halterm results
Halterm Income Fund, essentially the port operator of the port’s southern container terminal, announced on 23 August: “Year-to-date the terminal handled 91,354 containers compared to 98,670 in the same period of last year. For the six months ended June 30, 2001, net income was $2,041,000 compared to $4,421,000 for the first six months of 2000. Earnings before depreciation amortization and taxes (EBDAT) were $3,306,000 compared to $5,790,000 during the first six months of 2000. Historically, volumes are stronger in the latter half of the year and based on current volumes it is anticipated that future quarterly distributions will remain consistent with previous payments, at $24.37 per 100 units.’

The Fund stated: ‘The decline in EBDAT is principally a result of the shortfall in volume and interest costs associated with the post-Panamax crane purchase which was completed in 2000.’ {press release}

SAINT JOHN
29 August. The port authority places high value on the rail connection provided by NBSR and the B&A to Montréal, said Betty McMillan, marketing director for the port. Noting that Great Northern Paper had entered an appearance in the bankruptcy case, she said that company used the BAR/NBSR connection to take paper to Saint John for export.

Furthermore, because the port utilizes the rail line, the longer the uncertainty continues, the greater the chance of shippers using either some other route out of the port, or some other port. Kent Lines told her just recently, however, that traffic has stayed steady through the summer.

As for growing traffic so that the CDAC line became more viable, “we have a catch-22. We cannot bring in more cargo without access to a viable rail service, and yet the railroad will say it cannot provide a viable service without more traffic.” {ANR&P discussion 29.Aug.2001}

EDITORIAL
GOVERNOR/PREMIERS: ACT NOW!
The New England governors and the Atlantic premiers met 26-28 August in Connecticut, and came away promising some joint action on energy and global warming. One step they could take right now for both goals: ensure the survival of the rail line between Saint John and Montréal. And that means stepping up to buy that part of the line between Brownville Junction, Maine and Megantic Québec; no private party will buy it because it does not generate enough revenue.

Enough stakeholders exist to make this a public-private partnership (including the nascent effort in Greenville). The public contribution would come from the State of Maine, the Province of Québec, and the Province of New Brunswick (for the first time supporting a rail project), as well as the Saint John Port Authority. Private stakeholders include the Irving Group, whose traffic traverses the line and Logistec, the major port operator in Saint
John. Add to the mix advocacy groups such as Canada’s Transport 2000. It wants VIA back in Saint John, which will only happen if the line across Maine is preserved.

**But not to preserve Searsport for containers**

In the mid-1990s, MDOT and the B&A touted Searsport as a major container facility. With the passage of six years, that concept has become passe. The mega-containerships will not call Searsport. Even feeder ships aren’t needed: Saint John and Portland can serve the hinterland.

So the stakeholders should not consider Searsport as a key to CDAC (Irving and Saint John wouldn’t support CDAC for that reason anyway!). Searsport will survive and thrive under the dynamism of Sprague and Merrill’s, but as a bulk and breakbulk port. And those products, even if going as far as Montréal, are not time-sensitive. They could go out via Van Buren and the CN.

**An inter-nation joint venture**

If Maine and the two provinces join to preserve the rail line, they will not only support the natural-resource-based economies. They will also take the first step toward economic integration of the region, by creating the first provincial-governmental economic infrastructure project.