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BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36347

BESSEMER AND LAKE ERIE RAILROAD COMPANY
—ACQUISITION AND OPERATION—
CERTAIN RAIL LINES OF CSX TRANSPORTATION, INC. IN ONONDAGA, OSWEGO,
JEFFERSON, SAINT LAWRENCE, AND FRANKLIN COUNTIES, NEW YORK

SUPPLEMENTAL INFORMATION OF CSX TRANSPORTATION, INC.

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Dated: February 14, 2020

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INTRODUCTION AND SUMMARY

CSX Transportation, Inc. (“CSXT”)¹ hereby submits this supplemental information in response to the Board’s *Decision No. 3*, issued in the above-captioned matter on February 7, 2020. The Board seeks supplemental information “to complete the record regarding FGLK’s claims concerning potential anticompetitive effects of the Transaction.” *Decision No. 3*, slip op. at 4.

As the Board noted in *Decision No. 3*, FGLK has expressed concern that CSXT’s sale of the Massena Lines to B&LE “would prevent FGLK from competing for Canadian traffic moving over the Massena Lines to and from the Syracuse area.” *Id.*, slip op. at 3. That concern is without any foundation or validity. CSXT explained in its January 8 Comments that the sale of the Massena Lines will have no impact at all on FGLK’s ability to move traffic between its lines and the Massena Lines. Today, any FGLK traffic using the Massena Lines – and the volume of such traffic is very small – must be handled by CSXT. After the Transaction, CSXT will

¹ Unless otherwise defined herein, the acronyms and defined terms used herein are the same as those used in Reply Comments of CSX Transportation, Inc. filed in this proceeding on January 8, 2020 (“CSXT January 8 Comments”), modified as necessary to reflect the Board’s usage in *Decision No. 3*.

continue to participate in the movement of any FGLK traffic using the Massena Lines. Nothing changes competitively for FGLK or any of FGLK's shippers as a result of the Transaction.

In fact, as CSXT explained in its January 8 Comments, FGLK's concern is not actually about any change in competitive conditions for FGLK movements involving the Massena Lines. Rather, FGLK seeks to have the Board create, through conditions imposed on the Transaction, *new* commercial opportunities for FGLK that do not exist today. But the Board is not entitled to rewrite the commercial terms of the Transaction simply to improve commercial opportunities for FGLK. *See* CSXT Jan. 8 Comments at 19-21. Such a use of the Board's conditioning authority would not only be unlawful, it would also create dangerous precedent that would discourage or prevent line sales that have the potential for improving the national rail network. Indeed, as CSXT explained, CSXT would vigorously oppose any conditions that would undermine essential elements of the Transaction, including removal or modification of Section 5.14(b) of the PSA or imposed trackage rights over CSXT lines. CSXT Jan. 8 Comments at 18-19.

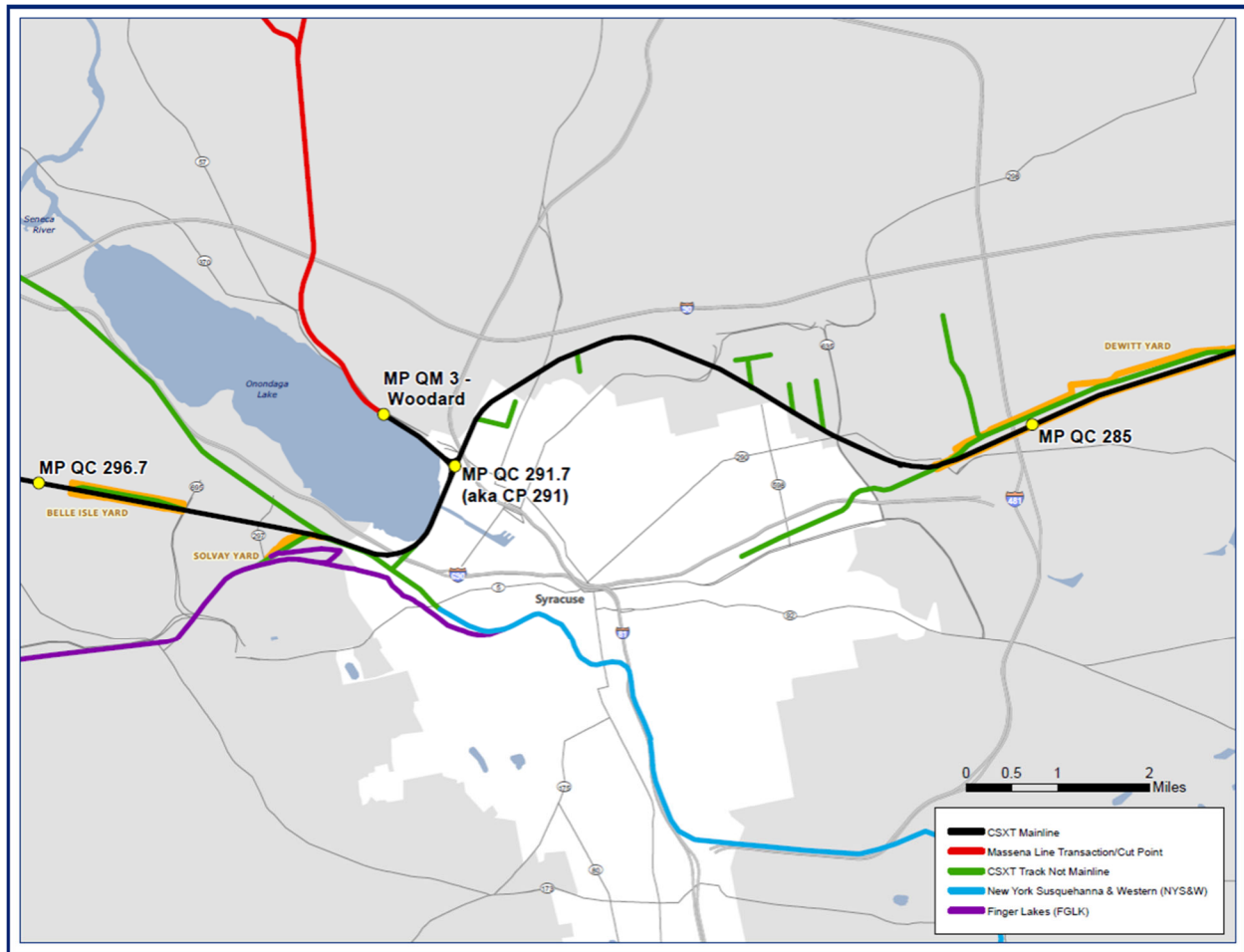
Decision No. 3 specifically seeks additional information on the competitive effects of two aspects of the Transaction: (1) the effect of Section 5.14(b) of the PSA on FGLK given the close physical proximity of B&LE operations post-transaction to FGLK; and (2) the possibility that some movements post-Transaction between FGLK and B&LE to and from the Massena Lines (although no such movements exist today) will require three carriers rather than two. As explained below, neither aspect of the Transaction raises competitive concerns that justify conditions of any type. *Decision No. 3* also asked for additional information on FGLK's request for trackage rights. CSXT further explains below that the imposition of any trackage rights over CSXT lines in Syracuse, which are part of a high-density CSXT east-west rail corridor, would be unlawful and inappropriate.

SUPPLEMENTAL INFORMATION

1. The post-Transaction proximity of B&LE operations to FGLK is not relevant to the Board's competitive analysis.

The first issue identified by the Board in *Decision No. 3* involves Section 5.14(b) of the PSA, which restricts B&LE from taking actions to establish a direct connection with FGLK or another short-line railroad in the Syracuse area. The Board points out that this restriction will apply notwithstanding that B&LE will operate post-transaction on CSXT's lines to CSXT's Belle Isle Yard, and therefore will come within about 600 feet of FGLK's interchange with CSXT in CSXT's Solvay Yard. Neither the Board nor FGLK explain why this physical proximity would have any bearing on the competitive analysis, and in fact the physical proximity of Belle Isle and Solvay Yards is irrelevant.

While Belle Isle and Solvay Yards may be near each other, the two yards are not directly connected. The map included in the Application at Exhibit 1, Map D-2 is set out below to assist the Board in understanding the relevant rail facilities in the Syracuse area. Belle Isle Yard is on the north side and Solvay Yard is on the south side of the Water Level Route, CSXT's high-density double-track main line that serves as CSXT's primary route between Chicago and the Northeast. In the vicinity of Belle Isle and Solvay Yards, the Water Level Route handles about 42 freight trains and eight Amtrak intercity passenger rail trains per day. The two yards may be close to one another, but they are separated by a major transcontinental line.



Since the two yards are not directly connected, B&LE's Belle Isle operations never physically connect with FGLK's operations in Solway, notwithstanding the physical proximity. For this reason, it is not clear why FGLK believes the physical proximity of B&LE's operations at Belle Isle to Solway is relevant to any analysis of Section 5.14(b). There is no physical connection that is being restricted by that provision. If FGLK's concern is that the physical proximity of the two yards would nevertheless make it possible for B&LE to pursue a build-out to FGLK were it not for Section 5.14(b), that concern would be misplaced for several reasons.²

² FGLK's claim that its rights under the Railroad Industry Agreement are negated by the restriction in Section 5.14(b) is wrong. As CSXT explained in its Jan. 8 Comments, if FGLK had grounds to seek relief under the RIA, nothing in Section 5.14(b) would prevent it from doing so. Jan. 8 Comments at 16.

First, the traffic that B&LE will handle to and from the Belle Isle Yard is irrelevant commercially to FGLK. B&LE will have operating rights solely to effectuate interchange at Belle Isle and only for unit trains operating on the Fulton Subdivision and military trains moving to or from points west of Syracuse. Application at 25-26, n.25. But FGLK does not handle any of this traffic. Thus, the only traffic that B&LE will handle in close proximity to the Solvay Yard is traffic in which FGLK has no commercial interest. Moreover, even if FGLK wanted to handle that traffic, it could not handle the unit trains that B&LE will operate to Belle Isle. The Belle Isle Yard has limited facilities but it can handle unit train movements because it consists of two long tracks, one approximately 6,000 feet in length and another that is about 15,300 feet. The interchange facilities at Solvay Yard, where FGLK operates today, are more extensive but they do not provide the operational capabilities to efficiently handle unit trains. The primary yard tracks in Solvay Yard are comprised of five tracks, with the average track length approximately 2,250 feet. While the CSXT and B&LE can move unit trains straight into and out of the Belle Isle Yard, the Solvay Yard does not support such efficient operations. Interchanging unit trains in Solvay Yard would require either shoving or run-around moves that create operational inefficiencies and most likely would require that the unit train be split into multiple tracks within Solvay Yard.

While FGLK does not have any commercial interest in the unit train and military traffic that B&LE will operate to and from the Belle Isle Yard, FGLK does handle a small amount of merchandise traffic that moves beyond the Massena Lines in Canada. But that merchandise traffic will not come anywhere near FGLK's operations in Solvay. B&LE has operating rights to move merchandise traffic only to CSXT's DeWitt Yard, CSXT's principal yard in the Syracuse area located to the east of Syracuse for interchanging intermodal traffic into and out of the

northeast. Application at 25-26, n.25. DeWitt Yard is comprised of 30+ tracks of varying length and purpose to support the switching and blocking of cars, building trains, and changing crews. Because the DeWitt Yard is configured for breaking and building trains, CSXT uses DeWitt for the interchange of most manifest traffic in the Syracuse area. Given the limited facilities at Belle Isle Yard, it would not be possible to carry out extensive car handling necessary to support merchandise traffic at Belle Isle. However, as is clear from the map, the DeWitt Yard is several miles away from Solvay Yard.

Second, the supposed close proximity of B&LE operations to Solvay Yard is also irrelevant because B&LE has operating rights solely to effectuate interchange at the DeWitt and Belle Isle yards but B&LE's *ownership* of the Massena Lines ends at Woodard, which is several miles away from the Solvay Yard. The fact that B&LE has rights to operate into the Belle Isle and DeWitt Yards has no relevance to the possibility of a build out or other connection between B&LE and FGLK. The B&LE-CSXT operating agreement, which is an outgrowth of the Massena Lines sale, will facilitate the efficient interchange of traffic, but it will not affect ownership rights. The Board and its predecessor have long recognized that rail carriers can select a physical interchange point other than the point of physical connection between their two lines to improve the efficiency of a through movement. *See, e.g., Black v. ICC*, 837 F.2d 1175, 1178 (D.C. Cir. 1988) ("The law is well settled that the selection of an interchange point is made by the carriers and that operation over another carrier's line to effect an interchange does not require Commission approval."). The operating rights that CSXT has conferred on B&LE will ensure efficient interchanges but they do not affect the point of physical connection of their lines at Woodard or the ownership rights of the carriers. The Transaction conveys ownership to B&LE of the Massena Lines only to Woodard, which is not in close proximity to Solvay.

Finally, the Board wrongly suggests that if B&LE did come into close physical proximity to FGLK post-Transaction, the Board should view Section 5.14(b) as similar to an “interchange commitment.” *Decision No. 3*, slip op. at 4. But as the Board recognized, Section 5.14(b) is *not* an interchange commitment, and for a critical reason it is not even *like* an interchange commitment for purposes of competitive analysis. Namely, Section 5.14(b) does not preclude an interchange between B&LE and FGLK; it only restricts B&LE – not FGLK – from taking actions to establish a new connection to FGLK. The purpose of Section 5.14(b) is not to prevent an interchange but to keep *the buyer* of the Massena Lines from undermining the economic assumptions that both parties recognized when they negotiated the terms of the Transaction. As CSXT has explained, CSXT would not have agreed to sell the Massena Lines if it had expected its counter-party in the Transaction to take actions to eliminate or restrict CSXT’s ability to participate in movements to and from Canada. CSXT Jan. 8 Comments at 18-19. Section 5.14(b) was thus an essential element of the sale. If FGLK believes that the market would support the expenditures necessary to establish a connection with B&LE, FGLK is free to undertake those expenditures and nothing in Section 5.14(b) would preclude or burden the resulting interchange.

2. The continued participation of CSXT in movements between FGLK and B&LE raises no competitive concerns.

The Board also states that it “is particularly concerned about the anticompetitive effects on any shippers whose traffic, post-Transaction, would originate or terminate on FGLK and move to or from points on the Massena Lines.” *Decision No. 3*, slip op. at 4. The purported basis for this concern is that the Transaction will “require an additional intermediate carrier” – CSXT – to handle this traffic. Whereas today only two carriers – FGLK and CSXT – handle such movements, post-Transaction three carriers – FGLK, CSXT, and CN System – would be

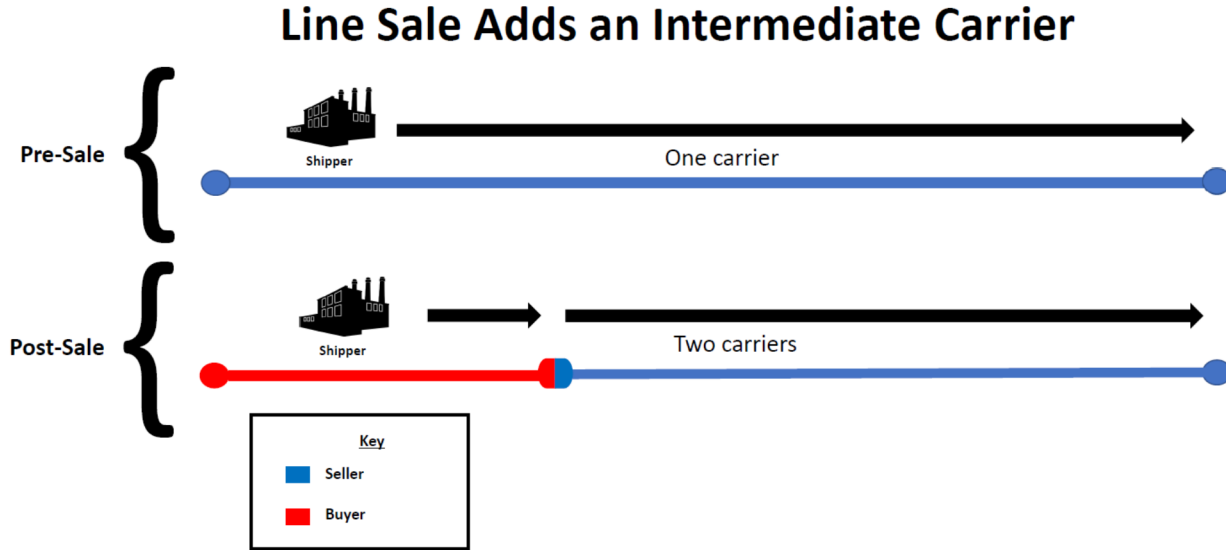
involved if there were any traffic. Here again, the Board's concerns are unwarranted for several reasons.

First, the Board is focused on traffic that does not even exist. The Board itself acknowledges that the evidence indicates that there are no customers located on FGLK who currently ship or receive carloads in movements to or from points on the Massena Lines.

Decision No. 3, slip op. at 3. In other words, no demand exists today for rail transportation between points on FGLK and points on the Massena Lines. All movements between FGLK and Canada on the Massena Lines that currently exist (as insignificant as they are today) will have the same number of carriers in the route – FGLK-CSXT-CN System. It would clearly be inappropriate for the Board to override the commercial terms of the Transaction based on purely speculative concerns about a market that does not even exist.

Second, the mere addition of a carrier to a through route as a result of a line sale does not mean the line sale will have anticompetitive effects. Indeed, the inevitable result of many line sales is an increase in the number of carriers participating in movements on the lines involved. Take the classic example of the spin-off of a line from an incumbent railroad to a new short line railroad. As depicted in Figure 1 below, the transaction converts single-line movements to two-carrier movements. But the mere fact that a second carrier now participates in the route does not result in an anticompetitive effect. Otherwise, spin-offs would not be allowed, a result that would clearly be contrary to Board policy.

Figure 1

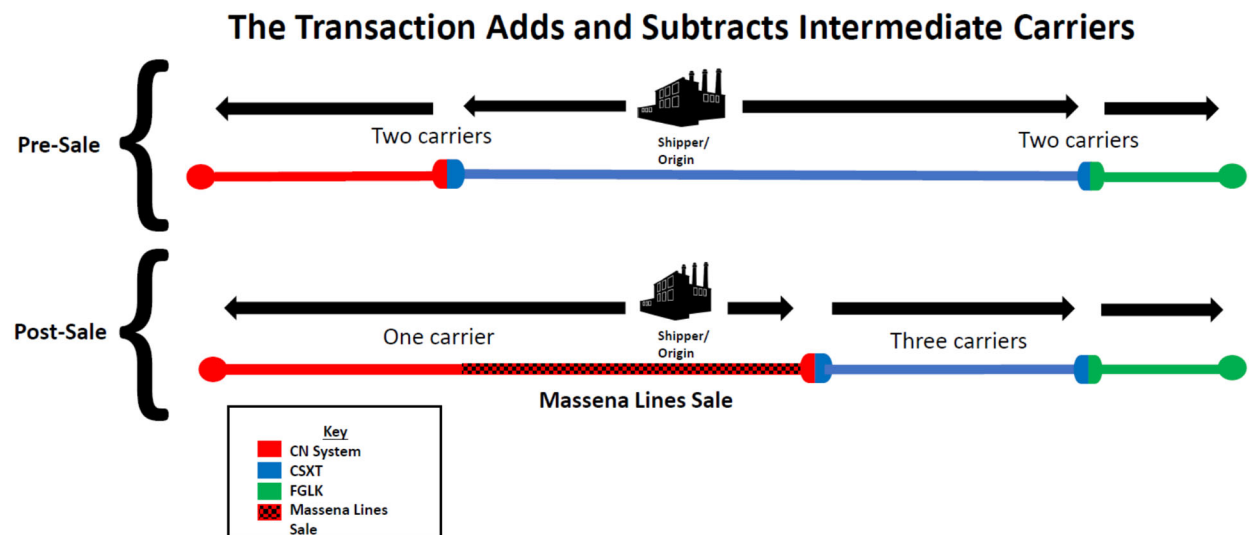


The *NSR/D&H* transaction discussed in greater depth in CSXT’s January 8 Comments provides a recent illustration of the Board’s recognition that the mere addition of a carrier to a through route is not anticompetitive. There, certain short line carriers alleged that a line sale transaction would cause the short lines to lose traffic because the transaction would result in routings with an additional intermediate carrier. *NSR/D&H*, slip op. at 25-27. The short line carriers sought conditions that would maintain the existing routing options or otherwise ensure that their rate divisions would not decrease. *Id.*, slip op. at 26. The Board concluded that, while the transaction “might increase the complexity of [the short line railroads’] routing options by adding another carrier, [the short line railroads have] not presented evidence that this change is actually anticompetitive.” *Id.*, slip op. at 27. Just such a situation exists here. As the Board has noted in other cases, carriers like CSXT here “have incentive to set viable levels for rates and divisions.” *CSX Transp., Inc. & Del. & Hudson Ry. Co., Inc.—Joint Use Agreement*, FD 35348, Dec. No. 6, slip op. at 8 (STB served Oct. 22, 2010). FGLK has not established (nor could it)

that the addition of an intermediate carrier for certain hypothetical movements would have any anticompetitive effect.

Moreover, line sale transactions such as this *necessarily* create scenarios where an additional intermediate carrier is *added* to certain movements, but where an intermediate carrier is also *removed* from other movements. To illustrate, Figure 2 below is a schematic that depicts the Massena Lines sale. A shipper located on the line to be sold (the Massena Lines) has two-carrier service in both directions before the line sale. After the line sale, the shipper goes to three-carrier service in one direction (noting again that such traffic does not exist) but goes to one-carrier service in the other direction (where significant traffic exists today). An additional carrier is added for some movements but is eliminated for others. A change in the number of carriers involved is the natural and inevitable result of a line sale and it does not raise competitive concerns.

Figure 2



Third, if the Board's concern is that the change from a two-carrier to a three-carrier movement (for traffic that, it must be repeated, does not even exist) could add costs to the through movement that might discourage future traffic, that concern is also misplaced. The

possible addition of costs to the through movement by adding an interchange has no effect on competition and should have no bearing on the Board's approval of line sale transactions. But in any event, the cost concern is not a valid one here. Described below are the operational facts showing that the operations that will result from the Massena Lines sale, in which CSXT will continue to handle traffic between the DeWitt Yard and Solvay, are far more efficient and less costly than the alternative requested by FGLK, which would cut CSXT out of the movement, establish a new movement between Woodard and Solvay for some traffic, and *add* unnecessary costs.

As noted previously, CSXT moves all FGLK traffic at Solvay Yard to and from the DeWitt Yard for further movement. That includes both the very small amount of FGLK traffic that ultimately moves to the Massena Lines but it also includes other traffic moving between Solvay and DeWitt, including other FGLK traffic, that does not relate at all to the Massena Lines. This CSXT Solvay-DeWitt movement will continue post-Transaction. Similarly, after the transaction, B&LE will move merchandise traffic between Woodard and DeWitt Yard, whether or not that traffic includes some cars that CSXT will ultimately take to FGLK at Solvay Yard. Indeed, nearly all of the traffic to and from the Massena Lines that B&LE will handle post-transaction has nothing to do with FGLK. Therefore, this B&LE Woodard-DeWitt movement will also continue to exist post-Transaction.

If the Board were to impose trackage rights on CSXT to allow FGLK or B&LE to move directly between Woodard and Solvay to carry traffic between FGLK and B&LE, a new train service (Woodard-Solvay) would be required and would have to be added to the existing train service over CSXT's busy Syracuse lines. CSXT's Solvay-DeWitt and B&LE's Woodard-DeWitt movements would still be needed for other traffic. This new and unnecessary Woodard-

Solvay service would impose new and additional costs. B&LE would incur additional costs in setting out special service to Solvay (for what could be negligible traffic). And given the lack of interchange facilities at Woodard, it is not clear where that operation would have to be performed and how large (potentially substantial) the additional costs would be to create this new movement.

In addition, CSXT would incur substantial costs accommodating new (and unnecessary) trains on its high-density Water Level Route. As noted previously, the Water Level Route is one of CSXT's densest corridors, serving as the primary route connecting Chicago and the Northeast. In order to operate from Woodard directly to Solvay, B&LE's (or FGLK's) trains would have to use crossovers to move from one main line track to the second, with the new train merging onto the Water Level Route and then, in a relatively short distance, crossing over from the north main line to the south main line in order to enter Solvay Yard. This train movement would occur at a speed far below the maximum speeds authorized in the area (50-60 MPH with passenger up to 79 MPH) due to operating requirements and safety concerns. Because the new train movements would be far slower than other trains, the additional moves onto the Water Level Route would congest the Water Level Route for an indeterminate period of time, reducing the efficiency and increasing the costs of CSXT's operations. Indeed, the addition of a new third-party train to CSXT's core Water Level Route could result in serious congestion and complexity in the region.

In short, the addition of an intermediate carrier – CSXT – to movements involving the Massena Lines would not add any costs to the movement, which (if there are any) would continue to be handled basically in the same manner as they are handled today. In contrast, the forced addition of a new movement between Woodard and Solvay would significantly increase

the costs of any movement on this new train service and potentially create wide-ranging service disruptions and congestion costs for many other movements in the Syracuse area.

3. The imposition of trackage rights would be unauthorized and inappropriate.

In addition to the removal of Section 5.14(b), FGLK has requested that the Board condition its approval of the Transaction on the grant of trackage rights to FGLK over CSXT to interchange with B&LE at Woodard, or trackage rights to B&LE over CSXT to interchange with FGLK at Solvay Yard. In *Decision No. 3*, slip op. at 4, the Board asks whether any modifications to this FGLK request would be appropriate if the Board found anticompetitive effects. The Board provides an example of “conditioning only to give B&LE trackage rights over CSXT to Solvay Yard, for the sole purpose of interchanging with FGLK only with respect to traffic that originates or terminates on FGLK.” *Id.* As explained below and in the CSXT Jan. 8 Comments at 21-22, any imposition of trackage rights conditions here, even as modified as suggested by the Board, would be without precedent and would represent a dramatic increase in the STB’s intrusion into railroads’ commercial decisions.

First, FGLK cannot seek, and the Board cannot impose, trackage rights conditions in minor transactions. *See* CSXT Jan. 8 Comments at 10, 21-22 (citing relevant statutes and Board regulations, along with *NSR/D&H*, slip op. at 25). Forced trackage rights are a draconian regulatory tool that Congress intended to be used only in cases raising significant and widespread competitive issues. This is a case where a line sale merely changes the location of an interchange between two railroads. It is a transaction with limited scope and no competitive effects. It would be unprecedented to consider trackage rights conditions in this transaction.

Second, even if the Board could impose trackage rights conditions on its approval of the Transaction, the case law makes it clear that the Board should only use conditions *of any type* to ameliorate a *reduction* in competition. But FGLK’s competitive options will not change at all by

the Transaction. Before the Transaction, FGLK must interchange with CSXT for traffic using the Massena Lines. After the Transaction, FGLK must continue to interchange with CSXT for traffic using the Massena Lines. As CSXT explained in its January 8 Comments at 21-22, no conditions – especially trackage rights conditions – would be appropriate to create new commercial opportunities for a third party that do not exist pre-transaction.

Finally, the Board would create dangerous precedent by using trackage rights to rewrite the terms of line sale agreements. Any grant of forced trackage rights creates numerous complexities, including operational concerns and compensation issues. Indeed, as explained in detail above, the imposition of trackage rights to create a direct Woodard-Solvay connection between FGLK and B&LE would require adding new train service onto a high-density segment of CSX's Water Level Route, potentially disrupting traffic in an important rail corridor. FGLK may not care about disruptions on other carriers' lines, but the Board is responsible for the larger public interest and it should carefully avoid interfering with rail carriers' commercial arrangements to advance the opportunistic interests of third parties.

If the Board opens the door to trackage rights relief in line sales where no showing of anti-competitive effects has been made, third-party connecting rail carriers will inevitably try to convince the Board to give them new access through mandated trackage rights. Line sales that have the potential for improving the national rail network could be discouraged, and regulatory proceedings that should be straightforward could become bogged down in disputes over the possibility of trackage rights. Even if the Board had the authority to consider trackage rights conditions in minor line sales, it would be bad policy for the Board to do so in anything but the most compelling circumstances where an unambiguous reduction in competition would result from the transaction.

CONCLUSION

The Transaction will have no anticompetitive effects, and the Board should reject the opportunistic attempt by FGLK to improve its commercial position following the Transaction through conditions on the approval of the Transaction. The Transaction itself is limited, essentially changing the point of interchange between CSXT and the CN System, and the Board should allow it to go into effect under the terms negotiated by the parties.

Respectfully submitted,



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Dated: February 14, 2020

VERIFICATION

I, Adam Smith, Head of Operations Planning & Performance, of CSX Transportation, Inc., declare under penalty of perjury that the factual information regarding CSXT facilities and operations contained in the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this factual information on behalf of CSX Transportation, Inc. Executed on February 14, 2020.


Adam Smith

CERTIFICATE OF SERVICE

I certify that I have, on February 14, 2020, served copies of this Supplemental Information of CSX Transportation, Inc. on all parties of record in this proceeding.

A handwritten signature in black ink, appearing to read 'Peter W. Denton', with a long horizontal flourish extending to the right.

Peter W. Denton
Attorney for CSX Transportation, Inc.