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February 25, 2021

301683

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

ENTERED
Office of Proceedings
February 25, 2021
Part of
Public Record

Re: STB Finance Docket No. 36472 (Sub-No. 5)
Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad
-Operation of Property of Another Rail Carrier-
Pan Am Southern, LLC and Springfield Terminal Railway Company

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a Petition for Exemption for the Pittsburg & Shawmut Railroad, LLC doing business as Berkshire & Eastern Railroad ("B&E"). Also enclosed, is an unredacted "Highly Confidential" version of Exhibit D, filed in accordance with the requirements of the protective order being requested by CSXT in connection with the Primary Application in FD 36472, and all related sub-dockets.

The filing fee has been paid via pay.gov. If there are any questions related to this filing, please contact me.

Sincerely,



Justin J. Marks
Counsel to Pittsburg & Shawmut Railroad, LLC

Enclosures **FILED**
February 25, 2021
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
February 25, 2021
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36472 (Sub-No. 5)

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD
– OPERATION OF PROPERTY OF RAIL CARRIER PAN AM SOUTHERN LLC –
PAN AM SOUTHERN LLC AND
SPRINGFIELD TERMINAL RAILWAY COMPANY**

PETITION FOR EXEMPTION

(contains color images)

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Berkshire & Eastern Railroad*

Dated: February 25, 2021

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SURFACE TRANSPORTATION BOARD

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– OPERATION OF PROPERTY OF RAIL CARRIER PAN AM SOUTHERN LLC –
PAN AM SOUTHERN LLC AND
SPRINGFIELD TERMINAL RAILWAY COMPANY**

PETITION FOR EXEMPTION

Pittsburg & Shawmut Railroad, LLC doing business as Berkshire & Eastern Railroad (“B&E”), a Class III carrier, hereby petitions the Surface Transportation Board (the “Board”) for an exemption under 49 U.S.C. §10502 and 49 C.F.R. §1121 from the provisions of 49 U.S.C. §§11323(a)(2) and 11324 to allow B&E to enter into contracts to operate the approximately 425 route miles of lines and incidental trackage rights of Pan Am Southern LLC (“PAS”), a Class II carrier, currently being operated by Springfield Terminal Railway Company (“Springfield Terminal”), a Class II carrier. The operating rights being granted to B&E are more fully described in the Summary of Proposed Transaction below. The rail lines and trackage rights to be operated (the “PAS Lines”) are described on the attached Exhibit A, and are shown on the map attached as Exhibit C.

As explained in the Primary Application in FD 36472 to which this Petition for Exemption is related, B&E will become the operator of the PAS Lines only upon approval of the Primary Application and satisfaction of the other conditions discussed herein. This Petition for Exemption

is filed as a transaction integrally related to, and dependent upon, such approval. P&S will operate on behalf of PAS and under PAS's common carrier authority.¹

B&E is an indirect subsidiary of Genesee & Wyoming Inc. ("GWI").² Because the PAS Lines to be operated by B&E connect with the lines owned and operated by three railroads in GWI's corporate family, this transaction is not eligible for the class exemption at 49 C.F.R. §1180.2(d)(2).

In support of its petition for exemption, B&E represents as follows:

SUMMARY OF PROPOSED TRANSACTION

Pittsburg & Shawmut Railroad, LLC is a Class III railroad by virtue of its ownership of railroad assets.³ It does not currently conduct any rail operations or have any employees. In this Petition for Exemption, Pittsburg & Shawmut Railroad, LLC seeks an exemption from 49 U.S.C. §11323(a)(2) to allow it, doing business as Berkshire & Eastern Railroad, to contract to operate on behalf of PAS (a Class II carrier), and to accept an assignment from Springfield Terminal (a Class II carrier) of Springfield Terminal's current rights to operate the PAS Lines.⁴ The PAS Lines are comprised of approximately 425 route miles of rail lines and incidental trackage rights located in Massachusetts, New Hampshire, Connecticut, New York, and Vermont, as

¹ The Board has previously held that a contract to operate the property of another carrier requires STB authority unless the arrangement is truly a black letter law agency relationship. *See Kansas City Transportation Company LLC – Lease and Assignment of Lease Exemption – Kansas City Terminal Railway Company and Kaw River Railroad, Inc.*, FD 34830 (STB served May 21, 2007).

² GWI is further controlled by Brookfield Asset Management, Inc and G&W Intermediate Holdings, LLC (formerly known as DJP XX, LLC). *Brookfield Asset Management, Inc. and DJP XX, LLC – Control Exemption – Genesee & Wyoming, Inc., et al.*, STB Finance Docket No. FD 36326 (served Oct. 29, 2019).

³ *Pittsburg & Shawmut Railroad, LLC – Acquisition Exemption – Buffalo & Pittsburgh Railroad, Inc.*, STB Finance Docket No. 34449 (served January 22, 2004).

⁴ Only the operations of PAS would be conducted under the business name Berkshire & Eastern Railroad.

described in Exhibit A and shown on the map attached as Exhibit C. The PAS lines, and B&E's operations, will connect with the lines of a number of railroads, including CSX Transportation, Inc. ("CSXT"), Norfolk Southern Railway Company ("NSR"), Delaware and Hudson Railway Company, Inc. / Canadian Pacific ("CP"), Boston and Maine Corporation ("Boston & Maine") (as operated under lease by Springfield Terminal), Batten Kill Railroad, Connecticut Southern Railroad, Inc. ("CSO"), New England Central Railroad, Inc. ("NECR"), Providence and Worcester Railroad Company ("P&W") and the Vermont Railway System. NECR, CSO and P&W, like B&E, are owned directly or indirectly, by GWI.

In the Primary Application in FD 36472, filed with the Board on February 25, 2021, CSXT has submitted an application to acquire the non-carrier Pan Am Systems, Inc., its non-carrier subsidiary Pan Am Railways, Inc. ("PAR") and, indirectly, PAR's subsidiaries Springfield Terminal, Boston & Maine, Maine Central Railroad Company, Portland Terminal Company, Northern Railroad, Stony Brook Railroad Company, and the Vermont and Massachusetts Railroad Company (the "CSXT-PAR Transaction"). Through its acquisition of Boston & Maine, CSXT will indirectly acquire a one-half interest in PAS. NSR owns the other one-half interest in PAS.

CSXT and NSR have agreed that if the CSXT-PAR Transaction is approved, rail competition in the areas served by PAS would be preserved and enhanced if PAS were operated by B&E, an operator that is not affiliated with either NSR or CSXT. B&E, operating as PAS, would maintain PAS's access to the NSR, CP, and CSXT rail systems, and to each of the short line railroads that connect to the PAS Lines. B&E initially expects to provide PAS service at substantially the same level as is currently being provided by Springfield Terminal. *See* Section II (1) of the Term Sheet Agreement attached hereto as Exhibit D (the "Term Sheet"). All shippers that have access to PAS will continue to have access to PAS. Additionally, B&E will be

responsible for setting rates for PAS in a non-discriminatory fashion as to all rail carriers that have the ability to interchange traffic with PAS or otherwise connect to PAS. B&E believes that it could expand existing relationships with short line railroads in the PAS service area to enhance regional business for the customers it will serve. Moreover, as an indirect subsidiary of GWI, B&E will benefit from GWI's safety and training programs and its experience in managing large regional railroads, as well as GWI's marketing and commercial resources in the region, all of which will strengthen the operating services that it will provide on behalf of and for the benefit of PAS.

Based on the foregoing, CSXT has agreed with NSR, that upon approval of the CSXT-PAR Transaction, the parties will cause PAS to enter into a contract with B&E to become the operator of the PAS Lines, and operating as PAS, B&E will replace Springfield Terminal. CSXT has also agreed that upon the approval of the CSXT-PAR Transaction, Springfield Terminal will assign its operating rights over the PAS Lines to B&E. B&E's contract to operate with PAS, and Springfield Terminal's assignment to B&E, will not be effective unless and until the CSXT-PAR Transaction is approved by the Board, the CSXT-PAR Transaction is consummated, the exemption sought by B&E herein becomes effective, and Springfield Terminal and B&E enter into implementing agreements with the relevant labor unions representing Springfield Terminal employees. *See* Section I (2) of the Term Sheet.

The proposed transaction involving B&E entering into a contract to operate the PAS Lines on behalf of PAS does not involve a Class I carrier. If not for the fact that the PAS Lines to be operated by B&E connect with the lines of other Class III carriers in GWI's corporate family, B&E's operating rights transaction would be handled as an exempt transaction under 49 C.F.R. §1180.2(d)(2). Since the transaction is not eligible for the class exemption, B&E is filing this individual Petition for Exemption.

ADDITIONAL INFORMATION

To facilitate the Board's review of this Petition for Exemption, B&E provides the following additional information that would have been required under 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6) and (a)(7)(ii) if this were being handled as an exempt transaction under 49 C.F.R. §1180.4(g):

1180.6(a)(1)

(i) The proposed transaction as described above involves the B&E entering into an operating contract with PAS to operate the PAS Lines on behalf of PAS, and an assignment from Springfield Terminal of Springfield Terminal's current operating rights over the PAS Lines. Because B&E, PAS, and Springfield Terminal are all carriers, B&E contracting with PAS and Springfield Terminal to operate the PAS Lines on behalf of PAS requires authorization under 49 U.S.C. §11323(a)(2), or an exemption therefrom.

The full name and address of the applicant are: Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad, 200 Meridian Centre, Suite 300, Rochester, NY 14618.

The name, address and telephone number of B&E's counsel who should receive correspondence are:

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(ii) B&E's contract to operate the PAS Lines on behalf of PAS will not be effective unless and until the CSXT-PAR Transaction in the Primary Application is approved by the Board, the CSXT-PAR Transaction is consummated, the exemption sought by B&E herein becomes effective, and Springfield Terminal and B&E enter into implementing agreements with the relevant labor unions representing Springfield Terminal employees.

(iii) The purpose of the transaction is to allow B&E, a short line not affiliated with the owners of PAS, to operate the PAS Lines on behalf of PAS and under PAS's common carrier authority. The transaction will take effect upon consummation of the CSXT-PAR Transaction, and is being done in order to preserve and enhance the competitive options that the PAS Lines offer to the areas they serve.

1180.6(a)(5)

B&E currently owns railroad property in Pennsylvania. The PAS Lines to be operated by B&E are located in Massachusetts, New Hampshire, Connecticut, New York, and Vermont. Springfield Terminal owns, leases, or operates railroad property in Massachusetts, New Hampshire, Connecticut, New York, Vermont and Maine.

1180.6(a)(6)

A map of the property currently owned by B&E is attached as Exhibit B. A map showing the PAS Lines to be operated by B&E is attached as Exhibit C.⁵ (Exhibit C shows the connecting

⁵ Exhibit C is the same map included with the Primary Application.

lines of affiliated railroads P&W, NECR and CSO, as well as those of other connecting Class I and short line railroads.) The property owned, leased and operated by Springfield Terminal is also shown on Exhibit C.

1180.6(a)(7)(ii)

Attached as Exhibit D is a redacted⁶ “Public Version” of the Term Sheet Agreement entered into among GWI, CSXT and NSR which contains the significant terms of the operating agreement to be entered into between PAS and B&E. The final operating agreement has not yet been negotiated, and will not be effective until the Primary Application is approved by the Board, the CSXT-PAR Transaction is consummated, the exemption sought by B&E herein becomes effective, and Springfield Terminal and B&E enter into implementing agreements with the relevant labor unions representing Springfield Terminal employees. Attached as Exhibit E is a draft of the Assignment to be executed by Springfield Terminal and B&E following approval of the Primary Transaction by the Board.

INTERCHANGE COMMITMENTS

In accordance with the requirements of 49 C.F.R. §1121.3(d), B&E certifies that no interchange commitment is being imposed as part of the proposed operating agreement under which B&E will operate the PAS Lines on behalf of PAS.

**B&E’S CONTRACTS TO OPERATE THE PROPERTY OF ANOTHER
RAIL CARRIER SHOULD BE EXEMPTED**

A contract to operate property of another rail carrier by any number of rail carriers is subject to the prior approval and authorization of the Board under 49 U.S.C. §11323(a)(2). Thus, unless

⁶ An unredacted “Highly Confidential” version of Exhibit D is being filed under separate cover in accordance with the requirements of the protective order being requested by CSXT in connection with the Primary Application in FD 36472, and all related sub-dockets.

the exemption requested herein is granted, the proposed contract of B&E to operate the PAS Lines would require that B&E file an application under 49 C.F.R. §1180. Since the transaction does not involve the merger or control of two Class I railroads, however, the Board would be required to approve the application unless it were to find both:

- (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and
- (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. §11324(d).

The Board is directed by 49 U.S.C. §10502 to grant an exemption from regulation if it finds that (1) regulation is not necessary to carry out the rail transportation policy (“RTP”) of 49 U.S.C. §10101, and (2) either the transaction is limited in scope or regulation is not needed to protect shippers from the abuse of market power. The Interstate Commerce Commission held:

In determining whether regulation of a transaction proposed for exemption under §10505 [now 10502] is necessary to carry out the RTP, our analysis generally focuses on the criteria relating to the underlying statute from which exemption is sought. We need not extend our analysis beyond what we would address in an application proceeding itself. See Finance Docket No. 31493, *Blackstone Cap. Partners -- Cont. Exempt. -- CNW Corp., Et Al.* (not printed), served July 5, 1989, at 2. Section 10505 provides a shortcut analysis to see if regulation -- in this case under §11344(d)[now 11324(d)] -- is necessary. If §11344(d) does not require review of particular issues, neither does the §10505 process.

Indiana R. Co. – Acq. & Oper. – Illinois Central R. Co., 6 ICC 2d 1004, 1006 (1990), *aff’d sub nom.*, *Village of Palestine v. ICC*, 936 F. 2d 1335 (D.C. Cir 1991).

As noted above, the inquiry under Section 11324(d) focuses on the lessening of competition and anticompetitive effects. Here, as discussed above and below, no such effects are likely as a result of the proposed operation of the PAS Lines by B&E. Moreover, since B&E is

independent of the owners of PAS, the proposed transaction will help to ensure that there is no undue concentration of market power as a result of the Primary Transaction.

Further, grant of the requested exemption would also be fully consistent with the standards of 49 U.S.C. §10502. This Petition for Exemption (together with the Primary Application) provides the Board with all of the information necessary to evaluate the proposed transaction, and detailed scrutiny of a full application is not required to carry out the transportation policy of 49 U.S.C. §10101. The grant of an exemption to B&E will minimize the need for Federal regulatory control (49 U.S.C. §10101(2)), ensure the development of a sound rail transportation system with effective competition among rail carriers and other modes to meet the needs of the public (49 U.S.C. §10101(4)), foster sound economic conditions in transportation (49 U.S.C. §10101(5)), reduce regulatory barriers to entry (49 U.S.C. §10101(7)), encourage efficient management of railroads (49 U.S.C. §10101(9)), avoid undue concentration of market power (49 U.S.C. §10101(12)), and provide for expeditious handling and resolution of all proceedings (49 U.S.C. §10101(15)). Moreover, the grant of the exemption will not adversely affect any of the other 15 items which have been made a part of rail transportation policy by 49 U.S.C. §10101. *See, Grand Trunk Western Railroad Company – Acquisition of Operating Easement – CSX Transportation, Inc.*, STB Docket No. FD 35661 (served February 8, 2013) (“GTW/CSXT”), slip op at 3-4. *See also Buffalo & Pittsburgh Railroad Inc. – Lease and Operation Exemption – Norfolk Southern Railway Company and CSX Transportation, Inc.*, STB Finance Docket No. 34955 (served September 25, 2007), slip op at 2; *St. Lawrence & Atlantic Railroad Company – Lease and Operation Exemption – Rail Lines of Fraser N.H. LLC*, STB Finance Docket No. 34239 (served September 5, 2002), slip op. at 2.

Regulation of this transaction is not needed to protect shippers from an abuse of market power. As indicated, there will be no adverse impacts on rail transportation or lessening of competition. B&E expects to continue service on behalf of PAS without materially changing the operations of the PAS Lines or the services to any of its shippers. *See* Section II (1) of the Term Sheet. Moreover, B&E will maintain PAS's independent access to the NSR and CSXT rail systems, and to each of the short line railroads that connect to the PAS Lines. As more fully analyzed in the Primary Application,⁷ PAS will continue to be an independent provider of rail service, and shippers will not lose any rail options, but will potentially benefit from greater efficiencies and enhanced rail service that B&E as part of the GWI corporate family will be able to provide as the operator of the PAS Lines. As such, there is no threat to shippers of any abuse of market power. Shippers will continue to have the option of shipping with PAS over the PAS Lines, the only change being that B&E will be the operator instead of Springfield Terminal. B&E is required to establish non-discriminatory rates for its operation of PAS. *See* Section IV (4) of the Term Sheet. As such, the Board should find that regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power since shippers will see no significant change in service or competitive alternatives. *See, e.g., GTW/CSXT*, slip op. at 4.

If the Board finds that there is no probable adverse effect on market power, the Board need not determine whether the transaction is limited in scope. However, if it were to consider the scope of the transaction, B&E believes that the Board should find the scope to be limited. Although B&E will operate in parts of five different states, it is a single Class III railroad that will be

⁷ *See* the Verified Statements of Dr. David Reishus, Dr. William Huneke and Sean Pelkey submitted as part of the Primary Application. Any competitive concerns over the limited overlap between the PAS operations to be conducted by B&E and other GWI-owned carriers on PAS's north-south route will be mitigated by commitments to maintain access that have been made by PAS (CSXT / NSR) to the relevant shippers and short line rail carriers.

operating the PAS Lines on behalf of PAS and under PAS's common carrier authority, and is merely replacing Springfield Terminal, who currently operates PAS on behalf of PAS, by assignment of Springfield Terminal's operating rights to B&E. PAS and the PAS Lines serve a limited portion of New England, and to reach beyond the area PAS serves, it relies on the number and variety of its connecting carriers. PAS connects with three Class III carriers in the G&W corporate family (NECR, P&W and CSO), and it also connects directly with Class I carriers CSXT, NSR, and CP, as well as the PAR railroads and the Vermont Railway System. B&E's operation of the PAS Lines on behalf of PAS will not reduce, change, or alter any of the existing PAS connections or arrangements. Shippers and connecting carriers will still have access to PAS and will not lose access to any carriers; no existing routes will be closed; and no existing interchange options will be eliminated. Under these circumstances, a finding of limited scope is clearly warranted.

LABOR PROTECTION

B&E currently has no employees, but currently intends to offer employment to Springfield Terminal employees working on the PAS Lines with a goal of filling 159 positions from the following crafts: Transportation, Mechanical, Engineering and Clerical / Dispatch. *See* Section II (1)(g) of the Term Sheet. The proposed transaction will have an impact on Springfield Terminal employment levels because B&E expects to utilize fewer employees than Springfield Terminal to operate PAS. However, as discussed below, adversely affected employees will be eligible for labor protective benefits; moreover, B&E intends to recognize unions currently representing Springfield Terminal's employees that will be hired by B&E, and to enter into agreements providing substantially similar terms and conditions to those contained in existing agreements.

Under 49 U.S.C. §10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because this transaction to operate the property of PAS involves one Class III carrier (B&E) and two Class II carriers (the operating contract with PAS, and the assignment of operating rights by Springfield Terminal), the standard labor protection requirements of 49 U.S.C. §11326(a), as set forth by the Interstate Commerce Commission in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) (“*New York Dock*”), will apply to this transaction.⁸

ENVIRONMENTAL AND HISTORIC REPORTS

The proposed transaction for the operation of the PAS Lines involves only the change in operators of PAS from Springfield Terminal to B&E, and will not result in operational changes on the PAS Lines that would exceed the thresholds established in 49 C.F.R. §§1105.7(e)(4) or (5). As such, the proposed transaction should be excepted from the Board’s environmental reporting requirements pursuant to 49 C.F.R. §1105.6(c)(1)(i). Further, the proposed transaction is excepted from the historic preservation reporting requirements since the proposed transaction is for the purpose of continued rail operations, and where further STB approval would be required to abandon any service and there are no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older. *See* 49 C.F.R. §1105.8(b)(1).

VOLUNTARY NOTICE / SERVICE

Although B&E is not required by 49 C.F.R. Part 1121 to provide specific notice of the filing of this Petition for Exemption, B&E is serving copies of the Petition on counsel for CSXT

⁸ The transaction for B&E to operate PAS on behalf of PAS is integrally related to the CSXT-PAR Transaction that is the subject of the Primary Application. P&S understands that standard *New York Dock* protections will also be imposed in connection with the related Primary Application.

in the Primary Application and the Governors and Departments of Transportation in each state in which PAS operates, and B&E will operate, as shown on the attached service list, so that they will have full notice of the transaction and the proposed exemption.⁹

CONCLUSION

For the foregoing reasons, B&E requests that the Board, under 49 U.S.C. §10502, exempt from regulation under 49 U.S.C. §§11323-11324, B&E's proposed contracts (operating contract with PAS, and assignment of operating rights with Springfield Terminal) to operate the PAS Lines, subject to the imposition of *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Respectfully submitted,

/s/ Eric M. Hocky

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*Counsel for
Pittsburg & Shawmut Railroad, LLC*

Dated: February 25, 2021

⁹ Each of the persons notified of the filing of this Petition for Exemption will also be receiving notice of the filing of the Primary Application.

VERIFICATION

I, Leonard Wagner, President of Pittsburg & Shawmut Railroad, LLC, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on February 25, 2021.



Leonard Wagner

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Petition for Exemption was served on the following by U.S. first class mail, postage pre-paid, or by email where indicated:

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/s/ Eric M. Hocky

Eric M. Hocky

Dated: February 25, 2021

EXHIBIT A
PAS LINES TO BE OPERATED BY
PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD

The PAS network consists of approximately 425 route miles of rail lines, including approximately 281.38 route miles owned or leased (including perpetual freight easement) and approximately 143.62 trackage rights route miles, in Connecticut, Massachusetts, New Hampshire, New York, and Vermont.

The PAS lines include two main line corridors, referred to as the Patriot Corridor and the Knowledge Corridor. The PAS Patriot Corridor extends between milepost 467.4 at Mechanicville, NY and milepost 311.97 near Willows, MA, a distance of approximately 151.4 miles, inclusive of freight easement rights over MBTA between milepost 329.55 at Fitchburg, MA and milepost 313.77 at Willows, MA, a distance of approximately 15.8 miles. PAS also has trackage rights at the western end of the Patriot Corridor over the CP Freight Subdivision between milepost 467.6 (CPF 468) at Mechanicville, NY and milepost 484.8 (CPF 485) at Mohawk Yard, NY, a distance of approximately 17.2 miles.

The PAS Knowledge Corridor extends between milepost 183.4 at White River Junction, VT and milepost 0.0 at New Haven, CT (Cedar Hill Yard), a distance of approximately 183.4 miles, inclusive of the following: 1) trackage rights over New England Central Railroad (“NECR”) between milepost 183.4 at White River Junction, VT and milepost 110.6 at East Northfield, MA, a distance of approximately 72.8 miles; 2) freight easement rights over MassDOT-owned track assets between milepost 110.6 at East Northfield, MA and milepost 62.0 at Springfield, MA, a distance of approximately 49.7 miles; and 3) trackage rights over National Railroad Passenger Corporation (“Amtrak”) between milepost 62.0 at Springfield, MA and milepost 0.0 at New Haven, CT, a distance of approximately 62 miles.

See Pan Am S. LLC—Acquisition and Operation Exemption—Lines of Boston & Maine Corp., FD 35147 (Sub-No. 1), Notice of Exemption at Exhibit 1 (filed June 27, 2008); *Norfolk S. Ry. Co.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, FD 35147 (STB served Mar. 10, 2009); *Mass. Dep’t of Transp.—Acquisition Exemption—Certain Assets of Pan Am S. LLC*, FD 35863 (STB served Dec. 24, 2014) (as modified, Mar. 27, 2015).

Additionally, PAS owns approximately 76.42 route miles of branch line track. The PAS Lines include the following branch line track:

- 1) freight easement rights over MassDOT-owned track assets between milepost 0.0 at North Adams, MA and milepost 4.59 at Adams, MA, a distance of approximately 4.59 miles;
- 2) between milepost 0.0 at Gardner, MA and milepost 1.16 at Heywood, MA, a distance of approximately 1.16 miles, inclusive of a lease of an approximately 0.14-mile line segment owned by PAR subsidiary V&M at Gardner, MA;

- 3) between milepost 28.01 at Ayer, MA and milepost 25.7 at Harvard Station, MA, a distance of approximately 2.3 miles;
- 4) between milepost 0.0 at Berlin, CT and milepost 8.4 at Derby, CT, a distance of approximately 42.9 miles, inclusive of freight easement rights over Metro North Commuter Railroad from milepost 27 at Waterbury, CT to milepost 8.4 at Derby, CT, a distance of approximately 18.6 miles;
- 5) freight easement rights over MBTA between milepost 33.72 at Willows, MA and milepost 31.43 at Littleton, MA, a distance of approximately 2.3 miles;
- 6) freight easement rights over MBTA between milepost 0.0 at Ayer, MA and milepost 5.0 at Groton, MA, a distance of approximately 5 miles;
- 7) between milepost 12.16, Rotterdam Junction, NY and milepost 0.0 (CPF 477), near Burnt Hills, NY, a distance of approximately 12.16 miles;
- 8) the Southington Industrial Branch, which is approximately 4.5 miles between Plainville and Southington, CT; and
- 9) approximately 3.7 miles of trackage rights over CSXT between North Haven and Cedar Hill Yard, CT.

See Pan Am S. LLC—Acquisition and Operation Exemption—Lines of Boston & Maine Corp., FD 35147 (Sub-No. 1), Notice of Exemption at Exhibit 1 (filed June 27, 2008); *Mass. Dep't of Transp.—Acquisition Exemption—Certain Assets of Pan Am S. LLC*, FD 35943, Motion to Dismiss at 7-8 (filed Aug. 14, 2015).

EXHIBIT B

MAP OF PITTSBURG & SHAWMUT RAILROAD, LLC-OWNED RAIL PROPERTY



Buffalo & Pittsburgh Railroad, Inc. (BPPR)
 400 Meridian Centre, Suite 330
 Rochester, New York 14618
 (585) 785-6400

Genesee & Wyoming (G&W) Railroads

- AOR** Aliquippa & Ohio River Railroad
- BPPR** Buffalo & Pittsburgh Railroad
- POHC** Pittsburgh & Ohio Central Railroad
- RSR** Rochester & Southern Railroad
- SOR** Southern Ontario Railway
- WCOR** Wellsboro & Corning Railroad

● Interchange Locations

Dashed line indicates Trackage Rights

EXHIBIT C

**MAP OF PAS LINES TO BE OPERATED
BY PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD**

**MAP OF LINES OPERATED BY
SPRINGFIELD TERMINAL RAILWAY COMPANY**

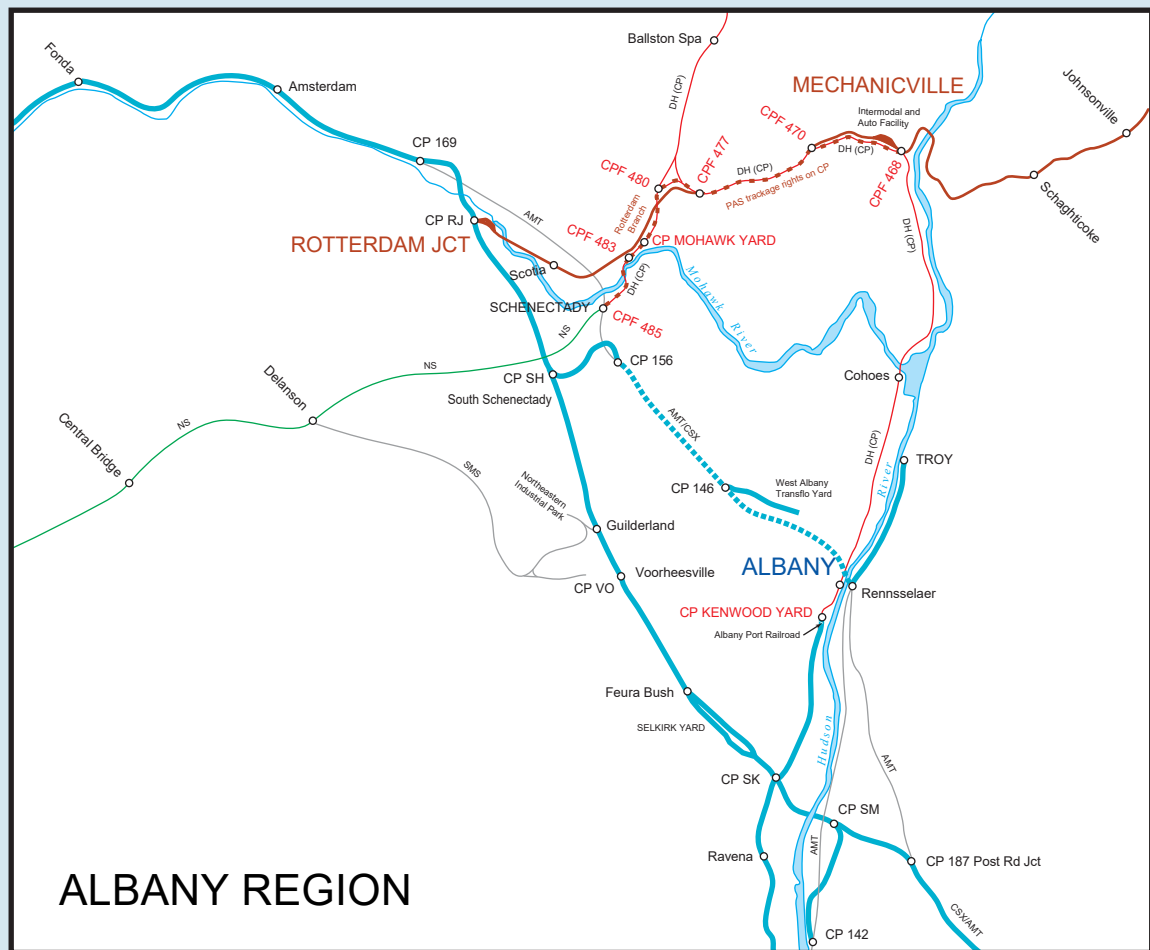
PAN AM RAILWAYS

BOSTON & MAINE CORP. • MAINE CENTRAL RAILROAD CO. • PAN AM SOUTHERN LLC • PORTLAND TERMINAL CO. • SPRINGFIELD TERMINAL RAILWAY CO.

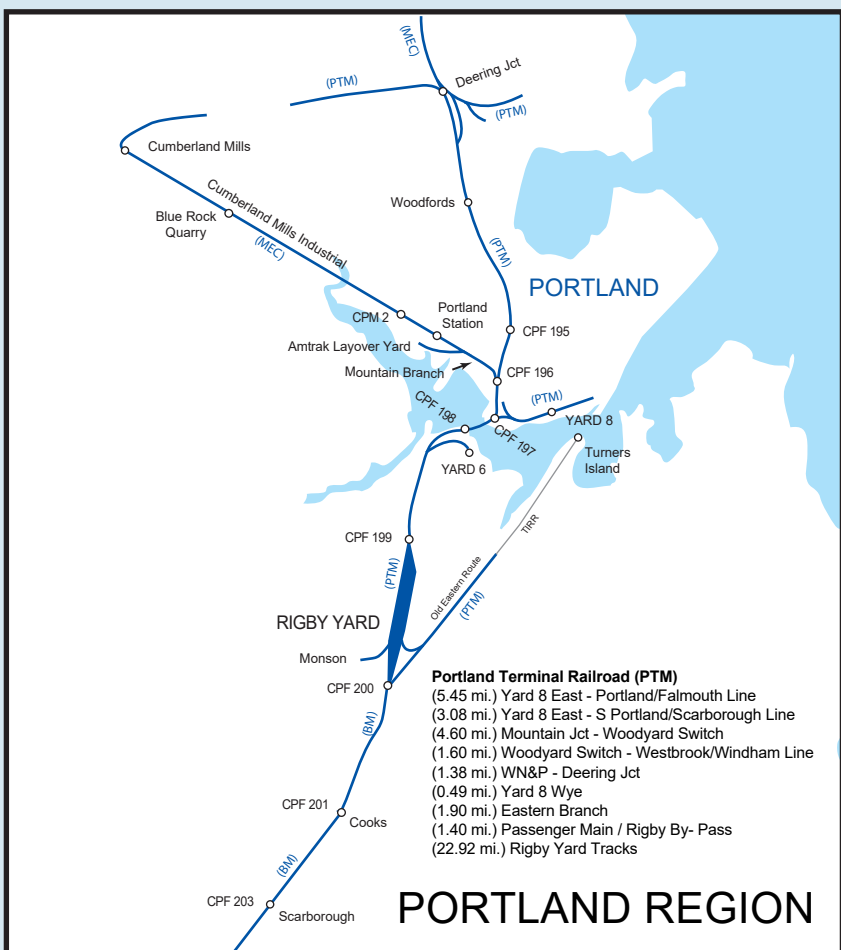
1700 IRON HORSE PARK • NORTH BILLERICA, MASSACHUSETTS 01862



Revised 2-22-2021 RRR



ALBANY REGION



PORTLAND REGION

Pan Am Southern (Operated by ST)

MAIN TRACKS
Patriot Corridor (139.7 mi) between Mechanicville, NY, and Ayer, MA including (15.8 mi) of freight easement rights over MBTA between Fitchburg (CPF 330) and Willows, MA (CP WL).
Freight Main Line (2.3 mi) between CP WL and CPF 312

BRANCHES
Rotterdam Branch (12.16 mi.) between CSX at CP RJ and the Canadian Pacific Railway at CPF 477.
Waterbury Branch (23.5 mi) between Berlin and Highland Jct., Waterbury, CT

OTHER TRACKS
Avon Industrial (1.46 mi.)
Berlin Industrial (2.6 mi.)
Canal Industrial (4.5 mi.)
Greenfield Industrial (7456 ft)
Heywood Industrial (0.77 mi)
Montague Industrial (7370 ft)
New Britain Industrial (4.5 mi.)
East Deerfield Industrial (1.2 mi.)
Waterbury Industrial (0.5 mi.)
Watertown Industrial (0.3 mi.)

TRACKAGE RIGHTS/FREIGHT EASEMENTS
Adams Industrial (4.6 mi) freight easement rights over the MassDOT owned line between N. Adams and Adams, MA shared with the Berkshire Scenic Railway passenger operation
CP Freight Sub (17.2 mi) trackage rights between Mohawk Yard and CPF 468 at Mechanicville, NY
CSXT (0.65 mi) trackage rights between North Haven and Cedar Hill Yard, CT
Green Mountain Railroad (VTR) (34 mi) trackage rights at Bellows Falls, VT
Greenville Industrial (5.0 mi) freight easement rights over the MassDOT owned line between Ayer and Groton, MA
MBTA Fitchburg Route (2.3 mi) freight easement rights between CP WL and Littleton, MA

Line Ownership

(BM) - Boston & Maine Corp.
(MassDOT) - Massachusetts Department of Transportation
(MEC) - Maine Central Railroad Co.
(NR) - Northern Railroad
(PTM) - Portland Terminal Co.
(SBRC) - Stony Brook Railroad Co.
(SPT) - Springfield Terminal Railroad Co.
(SBRC) Stony Brook Railroad Co.
(V&M) Vermont & Massachusetts Railroad Co.

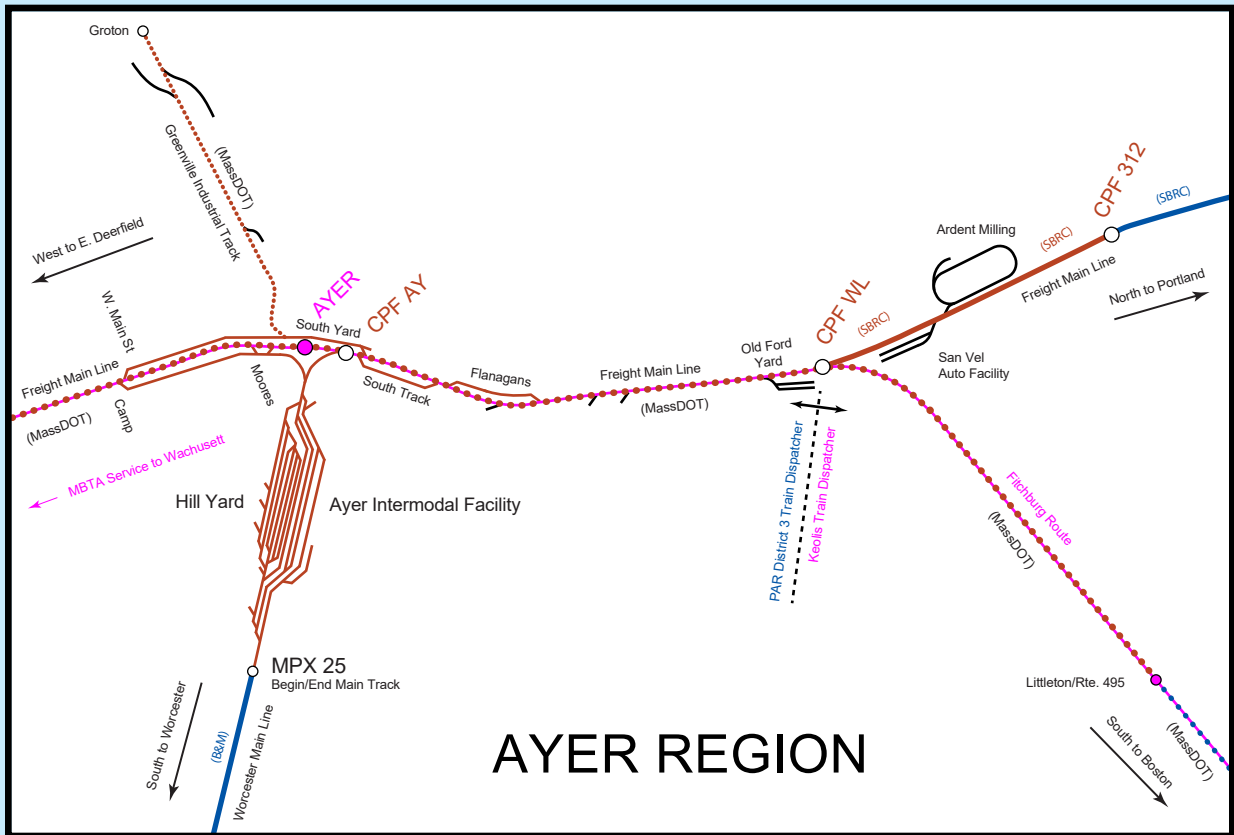
Pan Am Railways (Operated by ST)

MAIN TRACKS
Freight Main Line (300.1 mi) between Mattawamkeag, ME and CPF 312 at Ayer, MA
Northern Main Line /Capitol Corridor (45.6 mi.) between Concord, NH and CPF NC at N. Chelmsford, MA
Worcester Main Line (22.9 mi) between Harvard, MA and Barbers Station, MA

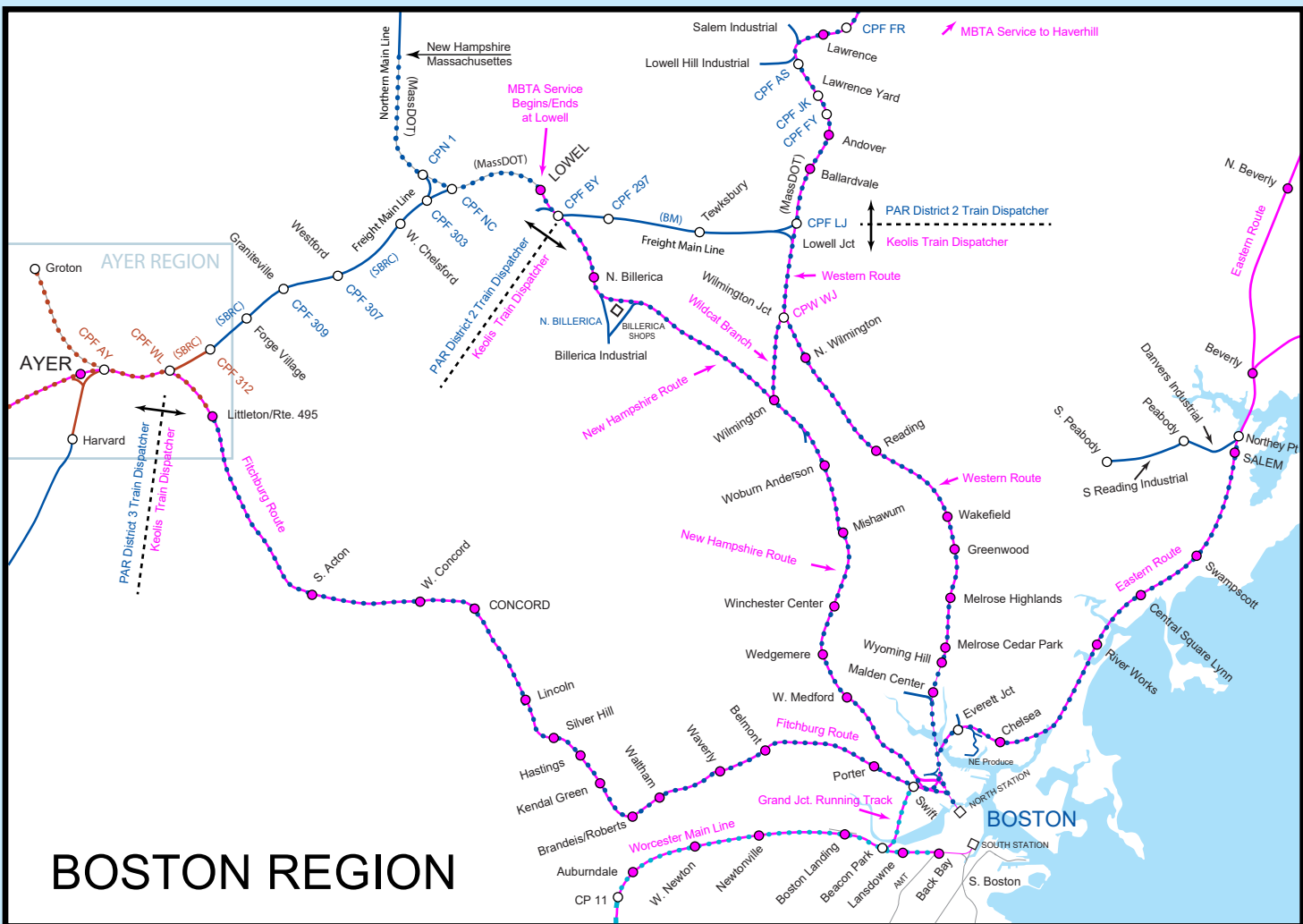
BRANCHES
Brunswick Branch (14.8 mi) between CPL 17 at Brunswick, ME and CPF 185 at Royal Jct., ME
Bucksport Branch (17.9 mi) between MPB 17 at Bucksport, ME and Calais Jct. at Bangor, ME
Hillsboro Branch (16.4 mi) between Wilton and Nashua, NH
Hinckley Branch (10.2 mi) between Hinckley and Fairfield, ME
Medford Branch (0.9 mi.) between the MBTA Western Route and Medford, MA
Mountain Branch (0.8 mi) between CPM 2 and CPF 196 in Portland, ME
Portsmouth Branch (10.6 mi) between Emery and MP P1 in Newfields, ME
Rumford Branch (44.9 mi) between Rumford, ME and Leeds Jct., ME

OTHER TRACKS
Billerica Industrial (2.7 mi.)
Danvers Industrial (1.9 mi.)
Concord Industrial (7.4 mi.)
Cumberland Mills Industrial (3.8 mi.)
East Augusta Industrial (18.9 mi.)
Lewiston Industrial (8.0 mi.)
Madison Industrial (25.3 mi.)
Newington Industrial (3.5 mi.)
South Reading Industrial (2.5 mi.)
Woburn Industrial (.07 mi.)
Boston Area Industrial Tracks (3.0 mi.)

TRACKAGE RIGHTS/FREIGHT EASEMENTS
MBTA (361.9 mi.) Trackage throughout Eastern MA
Maine DOT (9.4 mi.) between Brunswick and Lison Falls, ME
Northern VT Railway (0.1 mi.) St. Johnsbury, VT



AYER REGION



BOSTON REGION

LEGEND

- Pan Am Railways (PAR)
- PAR Trackage Rights
- PAR Perpetual Freight Easement
- Pan Am Southern (PAS)
- PAS Trackage Rights
- PAS Perpetual Freight Easement
- CSX Transportation (CSXT)
- CSXT Trackage Rights
- CSXT Perpetual Freight Easement
- Massachusetts Bay Transportation Authority (MBTA)
- MBTA Passenger Operating Rights on PAS
- Genesee & Wyoming Inc. (GWI) Owned Railroads (as indicated)
- GWI Owned Railroads Trackage Rights
- GWI Owned Railroads Perpetual Freight Easement

EXHIBIT D
“PUBLIC VERSION” OF TERM SHEET
AGREEMENT

**TERM SHEET AGREEMENT
G&W SUBSIDIARY AS PAS OPERATOR**

I. Introductory Provisions

- 1) This Term Sheet Agreement is between CSX Transportation, Inc. (CSXT), as future 50% owner of Pan Am Southern LLC (PAS), Norfolk Southern Railway Company (NSR), as current 50% owner of PAS, and Genesee & Wyoming Inc. (G&W). Collectively, CSXT, NSR and G&W may be referred to herein as the “Parties.”
- 2) CSXT, as future indirect 50% owner of PAS, and NSR, as current 50% owner of PAS, will cause PAS to enter into an agreement with a G&W subsidiary (OpCo) to operate PAS and to replace Springfield Terminal Railway Company (ST) as PAS operator effective upon (a) consummation of CSXT’s acquisition of Pan Am Systems, Inc. (Pan Am) and Pan Am’s indirect interest in PAS (the Transaction), (b) U.S. Surface Transportation Board (STB) approval or exemption of OpCo’s replacement of ST as operator of PAS, and (c) execution of implementing agreements with labor. The operating agreement between OpCo and PAS shall be developed based on the existing operating agreement between ST and PAS, as modified as provided in this Term Sheet Agreement.
- 3) At the same time CSXT files its Application with the STB, OpCo will seek operating authority from the STB to operate PAS. Such operating authority will be sought in a separate sub-docket related to CSXT’s Application for authority to acquire Pan Am.
- 4) G&W and NSR will support CSXT’s STB Application and the parties to this Term Sheet Agreement will reasonably cooperate to obtain authorization from the STB for the terms set out herein. Likewise, CSXT and NSR will support OpCo’s STB filing and will reasonably cooperate with G&W and OpCo to obtain authorization from the STB for replacement of ST with OpCo as the operator of PAS consistent with the terms set forth in this Term Sheet Agreement.

NOW, THEREFORE, for good and valuable consideration of \$1.00, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

II. PAS Operations to be Performed by OpCo.

- 1) OpCo will replace ST as the operator of PAS and will provide substantially all of the operating services that ST currently provides on PAS’s behalf, with certain exceptions. CSXT will cause ST to assign its operating rights to OpCo with PAS’ consent. The new operating agreement will generally mirror the mechanics and provisions of the current operating agreement. Among other things, the new OpCo operating agreement will provide the following:
 - a) PAS will engage and retain OpCo to be the designated Railroad Operator of PAS to manage, administer, supervise, perform and provide all freight rail services over PAS on behalf of PAS. OpCo’s service obligations will be substantially the same as those set out

in Appendix A to the current Railroad Operating Agreement [REDACTED].

- b) OpCo will appoint a general manager who will manage and supervise the operation, maintenance and use of PAS.
- c) OpCo will perform the maintenance, inspection and repair activities as provided in the current operating agreement. With respect to annual capital maintenance work, PAS will develop an annual budget and CSXT or NSR will have first priority for performing that work, with OpCo or a PAS-approved contractor having responsibility thereafter, subject to the terms of any applicable OpCo labor agreements. Such work shall be performed in accordance with an agreed upon capital maintenance schedule.
- d) OpCo will perform the administrative services, including claims handling, ancillary agreement management, accounting, MBTA and other passenger service interface, and review of PAS trackage and operating rights, as required under the existing operating agreement with ST.
- e) OpCo will assume any contractual obligations of ST with respect to dispatching services provided for MBTA, on behalf of PAS, and other passenger services, including any required local dispatching presence at Billerica, MA. CSXT, NSR and OpCo shall reasonably cooperate to address any concerns raised by those passenger services or the Commonwealth of Massachusetts relating to OpCo's role as operator of PAS.
- f) OpCo will furnish and/or cause to be furnished all labor, materials, supplies, tools and equipment necessary to perform its operating services. [REDACTED]

- g) OpCo will offer employment to ST employees with the goal of filling 159 positions from the following crafts: Transportation, Mechanical, Engineering and Clerical/Dispatch. The parties recognize that this number of employees was what G&W estimated it required as of February 22, 2021 and that the number of employees may change before OpCo commences its role as PAS's operator. OpCo will reasonably adjust its hiring obligation to reflect any such changes. OpCo will give first priority to current ST employees when filling its positions. [REDACTED]

[REDACTED] The employment terms of OpCo will be similar to ST's current terms.

- h) OpCo will prepare budgets, business plans and net cash flow reports consistent with the obligations of the railroad operator currently set out in section 5.7 of the PAS LLC Agreement.

- i) Within [REDACTED] after the commencement of OpCo's operation of PAS, OpCo, NSR and CSXT will agree on a suite of operating metrics and goals that OpCo will measure and report on at least a [REDACTED] basis. Such metrics will include [REDACTED], and other performance metrics as the parties shall agree, and will use current PAS operations as a baseline to measure future performance.

III. OpCo's Compensation

- 1) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

IV. OpCo's Pricing Obligations

- 1) As the railroad operator, OpCo will be PAS's agent responsible for developing, establishing and quoting the rates that will be charged by PAS for movements on PAS. OpCo will also be

responsible for establishing the form and content of any new customer transportation agreements involving movements on PAS.

- 2) OpCo will be responsible for all PAS customer interface, including invoicing PAS customers.
- 3) The interline and local traffic moving over PAS that is subject to PAS rates that will be set by OpCo will move in the revenue waybill of PAS.
- 4) Except to the extent established in the NSR Joint Use Agreement, the rates established and charged by PAS, while not necessarily equal, will not discriminate as to any rail carrier connecting to PAS, except based on mileage, density and similar operating characteristics. For the avoidance of doubt, the NSR Joint Use Agreement will be honored and is considered as an exception to this otherwise all-encompassing rule. OpCo will not use its rate-setting obligation to create a competitive advantage or disadvantage to any rail carrier or between or among any rail carriers connecting to PAS. OpCo will establish and charge rates on behalf of PAS that advance the economic interest of PAS as an independent rail carrier. OpCo will not establish or charge rates that are intended to favor the interests of any individual PAS owner or the separate interests of G&W and its affiliates. In setting non-discriminatory rates, OpCo can take into account the relative volume of traffic interchanged with a particular rail carrier, the commodity involved, the mileage traveled and equipment provided, so long as any such rates are reasonably based on cost differences associated with such differences in traffic.
- 5) OpCo will establish and charge rates that are sufficient to cover, but not be limited to, the fully allocated costs of PAS operations in the aggregate, including the total compensation paid to OpCo as PAS operator and services that are outsourced and not performed by PAS [REDACTED]. The intent of this provision is to ensure that revenues from PAS operations are at least sufficient to cover PAS operating costs and capital without a subsidy from PAS' equity holders.
- 6) Subject to the requirements above that rates be non-discriminatory and cover fully allocated costs, OpCo will develop, establish and charge market-based rates for PAS' services.

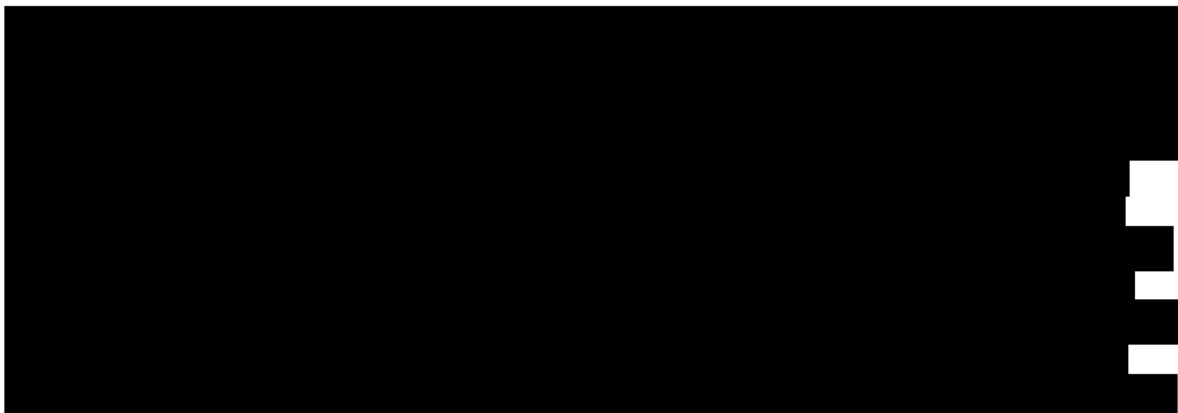
V. Additional Considerations

- 1) G&W, NSR and CSXT will agree to cooperate and take actions reasonably necessary to address any competitive concerns raised by OpCo's role as PAS operator and any concerns raised by States or passenger agencies that have operations over PAS lines. It is agreed that any such actions shall be solely limited to the purpose of preserving the current competitive position of a concerned party and not to either worsen or improve their competitive position or put PAS, NSR, CSXT or any G&W affiliate, in a less advantaged position than they are currently.

- 2) [REDACTED] e



- 3) CSXT, NSR and G&W recognize the STB will impose New York Dock labor protective conditions on CSXT's Application, including OpCo's acquisition of rights to operate PAS. Such New York Dock protection will be available to any eligible ST employee adversely affected by the Transaction. The parties will cooperate in the formation of New York Dock implementing agreements that provide for the division of ST employees between OpCo and ST in a manner satisfactory to CSXT and OpCo. CSXT, NSR and G&W also recognize that OpCo cannot take over PAS operations until required New York Dock implementing agreements are in place and have been implemented. The parties will seek to minimize any labor protection costs. CSXT and NSR will split the costs of any New York Dock labor protection as set forth in the Settlement Agreement to be entered into by them. For the avoidance of doubt, CSXT and NSR acknowledge and agree that neither G&W nor OpCo shall bear any New York Dock labor protection costs associated with CSXT's acquisition of Pan Am and/or OpCo's replacement of ST as PAS operator and/or termination or expiration of the new operating agreement.

- 4) 
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- [REDACTED]
- 5) The Parties shall act in good faith and use commercially reasonable efforts to satisfy any conditions imposed by the STB on its approval of the Transaction. [REDACTED]
- [REDACTED]

6)

7)

- 8) In order to promote a seamless transition, CSXT and NSR shall cooperate with OpCo before and during the transition of PAS operations to OpCo.

VI. Confidentiality; Consents; Regulatory Authority

- 1) Other than as required for regulatory authority, the contents of this Term Sheet Agreement shall remain confidential.
- 2) Except as otherwise set forth herein, the obligations of the Parties contained in this Term Sheet Agreement are intended to be binding upon the Parties and their successor and assigns; provided, however, that the obligations of the Parties described herein with respect to the operation and management of the PAS rail lines by OpCo are subject to the STB's approval

of the Transaction as provided in the introduction hereof, the execution and delivery of the new Railroad Operating Agreement between OpCo and PAS and the Parties' obtaining any necessary consent from third parties, government authorities, or any other necessary consent to effectuate the proposed Transaction.

- 3) Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the PAS LLC Agreement or the existing Railroad Operating Agreement, as applicable.

[Signatures on following page]

The Parties hereto have caused this Term Sheet Agreement to be executed by their respective authorized representatives as of the dates set forth below.

CSX TRANSPORTATION, INC., a Virginia corporation

By: _____
(print name)

Name: _____
(signature)

Title: _____
(print title)

Date: _____

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation

By: _____
(print name)

Name: _____
(signature)

Title: _____
(print title)

Date: _____

GENESEE & WYOMING INC., a Delaware corporation

By: _____
(print name)

Name: _____
(signature)

Title: _____
(print title)

Date: _____

EXHIBIT E
ASSIGNMENT OF OPERATING RIGHTS

ASSIGNMENT OF OPERATING RIGHTS

This Assignment is made as of _____, 2021, between Springfield Terminal Railway Company (“STR”) and Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad (“B&E”).

WHEREAS, STR is the operator of the lines of railroad and trackage rights of Pan Am Southern LLC (“PAS”) (together, the “PAS Lines”) under agreements approved by the Surface Transportation Board in *Norfolk Southern Railway Company, Pan Am Railways, Inc., et al. – Joint Control and Operating/Pooling Agreement – Pan Am Southern LLC*, STB Finance Docket No. 35147 (served March 10, 2009), slip op. at 1 (recognizing the STR operating agreements as part of the Transaction), 24 (approving the Transaction); and

WHEREAS, in STB Docket No. 36472, CSX Transportation, Inc. (“CSXT”) was authorized to acquire Pan Am Railways, Inc. (“PAR”) and indirectly its subsidiaries Boston and Maine Corporation (“Boston & Maine”) and STR (the “CSXT-PAR Transaction”). CSXT through its acquisition of Boston & Maine indirectly acquired joint control of PAS along with Norfolk Southern Railway Company (“NSR”); and

WHEREAS, as an integral part of the CSXT-PAR Transaction, CSXT and NSR agreed that following the approval and consummation of the transaction, PAS would replace STR as the operator of the PAS Lines; and

WHEREAS, PAS entered into an agreement with B&E to take over operation of the PAS Lines, and B&E has obtained an exemption from the STB in STB Docket No. 36472 (Sub-No. 5) to provide the service;

WHEREAS, STR and B&E are cooperating in the transition of operations of the PAS Lines;

NOW, THEREFORE, in consideration of the foregoing and intending to be legally bound, the parties agree as follows:

1. STR hereby assigns to B&E, all of its rights to operate and provide common carrier service over the PAS Lines.
2. B&E hereby accepts the assignment of STR’s operating and common carrier rights over the PAS Lines.
3. STR is discontinuing its operating and common carrier rights over the PAS Lines.
4. This Assignment, and each of the actions set forth above, is and shall be effective as of _____, 2021.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first set forth above.

Springfield Terminal Railway Company

Pittsburg & Shawmut Railroad, LLC d/b/a
Berkshire & Eastern Railroad

By: _____
Name:
Title:

By: _____
Name:
Title: