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Surface Transportation Board
395 E Street SW
Washington, DC 20423
(202) 245-0245 | TTY (800) 877-8339

Re: STB Finance Docket no. FD 36472

To Whom it May Concern,

Please find enclosed for filing the State of Vermont, Agency of Transportation's *Opposition to Application and Petition and Preliminary Comments and Certificate of Service* for the above-referenced matter.

Thank you for your attention to this matter. Please let me know if you have any questions.

Sincerely,

/s/ Megan Gregory
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March 17, 2021

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street S.W., Room 1034
Washington, D.C. 20423-0001

Re: Docket No. FD 36472

CSX Corporation and CSX Transportation, Inc. — Control and Merger — Pan Am Systems, Inc., Pan Am Railways, Inc., Boston & Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company

Docket No. FD 36472 (Sub-No. 5)

Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad — Operation of Property of Property of Rail Carrier Pan Am Southern LLC — Pan Am Southern LLC and Springfield Terminal Railway Company

**STATE OF VERMONT’S OPPOSITION TO APPLICATION AND PETITION
AND PRELIMINARY COMMENTS**

Dear Ms. Brown:

The State of Vermont, acting through its Agency of Transportation (“VTrans”) and by and through its undersigned counsel, hereby opposes the Surface Transportation Board’s review and processing of the above referenced proceedings as presented by the filers in each docket. Specifically, the Application in the main docket does not involve a “minor” transaction but rather a “significant” transaction and the Applicants in that proceeding have offered inadequate competitive analysis to enable the Board to conclude that the anticompetitive impacts of the proposed transactions are “clearly” outweighed by potential benefits. In addition, the petition for exemption (“Petition”) filed by Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad (“B&E,” a Genesee & Wyoming, Inc. (“GWI”) subsidiary) in the FD 36472 (Sub-No.5) proceeding poses anticompetitive harms warranting outright rejection of the Petition. Therefore, the State of Vermont respectfully requests that the Board reject the Application and Petition¹ and require re-filing under a comprehensive and integral application for a “significant” railroad consolidation transaction. In the alternative, Vermont respectfully requests that the Board extend the proposed 60-day minor transaction procedural schedule to allow adequate time for all interested parties to review the application.

I. Factual Background

Since the 1960s, Vermont has invested hundreds of millions of dollars into the State’s rail infrastructure, including acquisition of rail lines within Vermont and extending into neighboring New York State, to ensure competitive pricing and service both to and within Vermont. See Verified Statement of Daniel P. Delabruere, attached herein as Exhibit A. In time, these expenditures have resulted in a marked increase in rail traffic, bringing with it not just competitive pricing, but also alternative service lines when competitors are unable to deliver vital and time-sensitive deliveries such as fuel oil, propane, road salt, and livestock feeds in winter months. Id. at 5. The proposed transaction would assign GWI’s subsidiary Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern (“GWI/B&E”) to operate the

¹ To the extent FD 36472 (Sub-No. 5) pertains specifically to the installation of Genesee & Wyoming, Inc. (“GWI”) subsidiary as operator of PAS lines to avoid the perception of anti-competitiveness, VTrans notes that this submission explicitly states that it is contingent upon acceptance of the “primary application” in the main docket. See FD 36472 (Sub-No. 5) Petition at 6 (“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.”). Thus, VTrans’ request to recategorize the transaction as “significant” applies to both the FD 36472 application and the individual petition for exemption filed FD 36472 (Sub-No. 5), and both filings are addressed as part of a collective whole in this filing, as both filings rely on and are impacted by the deficiencies with the Application.

services west of Ayer, Massachusetts now operated by Pam Am Southern, LLC (“PAS”) to GWI/B&E, which will result in GWI/B&E effectively eliminating a competing carrier (PAS) at the Bellows Falls, White River Junction, and Hoosick Junction (NY) interchanges with Vermont Rail System (“VRS”). This arrangement would effectively bookend VRS’ short-line service between Hoosick Junction, New York and Burlington, Vermont by GWI-controlled interchanges. *Id.* at 6. If approved, these changes in operation will directly undermine Vermont’s decades-long efforts to maintain and improve access to regional short-haul markets and competitive Class I connections by all but eliminating competition at each junction by way of a 2-to-1 reduction in competition. *Id.* at 6-7; *see also* Draft Vermont Rail Plan, at 36 (available at <https://vtrans.vermont.gov/sites/aot/files/planning/documents/Draft%20Rail%20Plan%202-2-2021%20V5.pdf>). The Applicants’ insufficiently supported conclusions, vague assurances, information omissions, and incredible claim that two GWI subsidiaries—New England Central Railroad, Inc. (“GWI/NECR”) and GWI/B&E—will maintain meaningful competition despite the management chain leading to the same principal do not adequately address the significant anticompetitive effects it will have on the Vermont region. *Cf.* Primary Application, Verified Statement of Mr. Sean Pelkey, at 9.

II. Analysis

In accepting an application for a transaction not involving two or more Class I railroads, the Board must determine whether the proposed transaction is “minor” or “significant,” depending on whether the transaction would have “regional or national transportation significance.” 49 U.S.C. § 11325; Norfolk S. Ry.—Acquisition and Operation—Delaware & Hudson Ry. Co., Inc., FD 35873, 7 (STB served Dec. 16, 2014) (“Norfolk S. Ry.”). A transaction is minor for purposes of Board analysis if it is not of regional or national transportation significance, and either: (1) the transaction clearly will not have any anticompetitive effects; or (2) any anticompetitive effects of the transaction will clearly be outweighed by the transaction’s anticipated contribution to the public interest in meeting significant transportation needs. 49 C.F.R. § 1180.2; Norfolk S. Ry., FD 35873, 7. The Board has explained that “[t]he purpose of the test articulated in section 1180.2 of the Board’s regulations is to allow the Board to lessen the regulatory burden when ‘a determination can clearly be made, at the time the application is filed, that the transaction passes muster under’ the statute.” Canadian Pacific Ry. Co., et al.—Control—Dakota, Minn. & Eastern R.R. Corp., et al., FD 35081, 6 (STB served Nov. 2, 2007) (citations omitted) (“Canadian Pacific Ry”).²

Applicants’ proposed transaction will have significant regional impacts and anticompetitive effects in Vermont, which Applicants have not adequately

² A “significant” transaction must meet different procedural and information requirements than a “minor” transaction: applicants must submit more detailed information regarding competitive effects, operating plans, and other issues for a “significant” transaction. Canadian Pacific Ry., FD 35081, 5 (citing 49 C.F.R. § 1180.4(d)).

explained. In addition, Applicants' conclusory statements that the transaction will have public benefits is similarly underdeveloped, particularly since it does not fully identify the anticompetitive effects or the details as to how those effects will be mitigated. Therefore, the application fails to provide the Board with information sufficient for it to determine that the public interest clearly outweighs such effects.

1. The transaction clearly will have anticompetitive effects on Vermont.

In ultimately assessing whether a transaction will have anticompetitive effects, the Board evaluates whether it will substantially lessen competition, create a monopoly, or restrain trade. See Bessemer & Lake Erie—Acquisition & Operation—CSX Trans., Inc., FD 36347, 6 (STB served Nov. 8, 2019) (citing Norfolk S. Ry.—Joint Control & Operating/Polling Agreements—Pan Am S. LLC, FD 35147, at 5 (STB served Mar. 10, 2009) (“NSR-Pan Am Southern”). In making such an evaluation, the Board conducts a fact specific inquiry, examining factors such as whether the transaction will create a 2-to-1 reduction in competition, Norfolk S. Ry., FD 35873, 17, whether the transaction will maintain the competitive status quo, Bessemer & Lake Erie—Acquisition & Operation—CSX Trans., Inc., FD 36347, at 6 (STB served Nov. 8, 2019)), and whether the transaction is an end-to-end transaction that is unlikely to raise competitive concerns, id. (citing NSR-PanAm Southern, 5).

Here, the Board cannot presume that the proposed transaction on its face is competitive. The proposed transaction will create a 2-to-1 reduction in competition and Applicants have not demonstrated how they will mitigate this to maintain the competitive status quo. In addition, the transaction is not solely an end-to-end transaction, despite Applicants' characterizations that it is “mostly” so. The aspects of the transaction that are not end-to-end will result in significant anticompetitive effects in Vermont. As a result, Applicants fail to demonstrate how the transaction will not substantially lessen competition, create a monopoly, or restrain trade.

a. The transaction will create a 2-to-1 reduction in competition.

The Board has consistently sought to preserve competitive rail service options that otherwise would be reduced or compromised by a proposed transaction. Norfolk S. Ry., FD 35873, 17-18. The transaction will result in a 2-to-1 reduction in competition. Application, 14. Applicants' concession that the transaction will result in a reduction from two carriers to one in Vermont is particularly alarming given the Board's historic treatment of such transactions. In Norfolk S. Ry., the Board found that without voluntary arrangements to preserve shippers' access to two carriers, the acquisition transaction may have resulted in any likely, substantial anticompetitive effects that cannot be mitigated through the imposition of conditions. Norfolk S. Ry., FD 35873, at 18. The Board based this finding on its statement that it seeks to protect competition overall, not specific competitors, and

explicitly protects against “2-to-1 reduction in competition” at interchange points affected by a proposed railroad transaction. Id. at 17-18.

Currently, two carriers connect with VRS at two interchanges critical to Vermont’s economy: Bellows Falls and White River Junction, Vermont. Exhibit A at 2-6. Having at least two carriers service these interchanges encourages honest competition and has also historically enabled alternative service routes when Vermonters have faced shortages of critical commodities and staples. Id. at 6 (discussing First Nations’ blockade and fuel delivery).

The Applicants seek to alter this competitive landscape by replacing PAS at each of these gateways with GWI/ B&E, even though an existing GWI subsidiary, GWI/NECR, is the “other” connecting carrier at Bellows Falls and White River Junction, as well as the sole connecting carrier in Burlington, VT. Id. If approved, such changes would, in turn, result in GWI bookending the Hoosick Junction-Burlington VRS line. Id. at 7.

Applicants’ proposal explicitly includes a 2-to-1 reduction in competition. Primary Application, Verified Statement of Mr. Sean Pelkey, at 14. The Applicants concede that the transaction will “reduc[e] competitive alternatives” with certain connecting railroads (such as VRS) at Bellows Falls and White River Junction. Primary Application, Verified Statement of Dr. David Reishus, at 27. Applicants claim that “the parties have agreed to conditions that preserve current competitive conditions” (presumably a reference to the arrangement with GWI for the new GWI subsidiary, GWI/B&E, to take over PAS operations), but they do not address, much less detail, how GWI will ensure that GWI/NECR and GWI/B&E meaningfully compete with one another given that they are managed by the same parent corporation. Id. Even if such an arrangement between subsidiaries exists, it leaves railroad operators in Vermont at the mercy of agreements to which they are not parties. Simply put, the Applicants’ proposal has significant regional implications that reach far beyond a single, contained transaction and, without adequate assurances as to how GWI subsidiaries will meaningfully compete against one another, it is all but certain to impact the current competitive field at these interchanges.

b. The transaction is not solely an end-to-end transaction.

Applicant’s proposed transaction is not solely an end-to-end transaction. Applicants’ representations that the transaction is mostly an end-to-end transaction glosses over important aspects of the proposal.³ Indeed, the Applicants characterize the entire transaction as “end-to-end *when considered together with the Related Transactions.*” Primary Application, at 24 (emphasis added). However, in the

³ See Primary Application at 7, 24; Verified Statement of Mr. Sean Pelkey at 3-4; Verified Statement of Dr. David Reishus, at 3, 16, 18, 26; Verified Statement of Dr. William Huneke, at 3.

Verified Statement of Mr. Sean Pelkey, Mr. Pelkey specifically identifies the proposed operation of PAS by B&E as not being an end-to-end transaction. Verified Statement of Mr. Sean Pelkey, at 13. Based on the application materials alone, this transaction is not solely an end-to-end transaction and therefore cannot be characterized as a transaction unlikely to raise competitive concerns. Cf. Bessemer & Lake Erie—Acquisition & Operation—CSX Trans., Inc., FD 36347 et al., at 6 (STB served Nov. 8, 2019) (citing NSR-Pan Am Southern, FD 35147 et al., at 5). It follows that Applicants cannot rely on the argument that the transaction is an end-to-end transaction that will not substantially lessen competition, create a monopoly, or restrain trade to demonstrate that the transaction will not have anticompetitive effects.

c. The transaction does not maintain the competitive status quo.

Applicants' proposal to install an "independent" operator on the competing lines into and within Vermont fails to overcome the anticompetitive effects of reducing from 2-to-1.

First, Applicants' assurances rely on the corporate fiction that two GWI subsidiaries will compete in a meaningful way, while simultaneously extolling the virtues of consolidated service, a "unified customer interface" and "access to rates and equipment ordering through a single point of contact." Verified Statement of Mr. Sean Pelkey, at 4. Otherwise, the application lacks any information regarding proposed corporate and management structures, service commitments to carriers who are not parties to their agreements, or meaningful pricing information. See, e.g., Primary Application at 17 ("CSXT is not able to quantify the benefits in terms of cost savings or increases in net revenue at this time."). There is no actual evidence in the application or the related sub-dockets that the two rail lines will be operated independently despite sharing an owner.

Second, the application suggests that competitive pricing will be preserved because "CSXT and NSR have agreed that PAS will establish rates for these customers at current levels, subject to future reasonable escalation, as long as B&E is operator of PAS." Verified Statement of Mr. Sean Pelkey, at 15. The application provides no information as to when escalation will occur in the future, or what Applicants believe to be "reasonable" escalation. Moreover, this pricing commitment does not prevent Applicants from using anticompetitive pricing in their outside rail networks to influence competition within the proposed transaction area. Thus, to the extent Applicants have made a commitment to carriers who are not party to this series of agreements, such reassurances are meaningless.

d. Any proposed "mitigation" lacks sufficient detail to determine its effectiveness.

Because of the admittedly anticompetitive impacts of the proposed 2-to-1 reduction in service, Applicants make several claims for mitigation. However, none

of these mitigation efforts are developed with any level of detail that would allow the Board to determine whether they would be actually effective.

First, as previously discussed, the application notes that VRS rates will be “subject to future reasonable escalation” but provides no information on when or what that escalation will be. *Id.* at 15.

Second, the application claims that “B&E will not share with any other [Genesee & Wyoming, Inc.]-controlled rail carriers any information regarding rate divisions from connecting railroads that B&E becomes aware of as a result of operating PAS.” *Id.* at 16. Not only does this admission that they could “become aware” of sensitive rate divisions contradict Applicants’ claim that the operators will be totally independent, but the application has no details as to how it intends to protect rate setting data.

Lastly, despite the Applicants’ representation that its two subsidiaries will engage in good faith competition, Vermont (and all other interested parties, for that matter) are not in privity with Applicants’ contracts and, by logical extension, are unable to ensure such an independent relationship between GWI and B&E in fact occurs.

Thus, at this early juncture, the application lacks sufficient detail for the Board to meaningfully assess whether its claims regarding competition are true or if its proposed mitigation would be effective. Therefore, the application is incomplete for purposes of the Board’s ability to determine whether this transaction will not substantially lessen competition, create a monopoly, or restrain trade.

2. The Board cannot review the transaction’s potential impacts on public interest.

Because the anticompetitive effects of the transaction cannot be determined due to the lack of substantive information in the application, the transaction’s anticipated contribution to the public interest in meeting significant transportation needs cannot be weighed against the anticompetitive effects. Therefore, the application lacks critical material required by the Board to review the transaction.

Even were the Board to weigh the anticompetitive effects against the public interest, both inquiries require highly fact-specific analyses; an effort for which the minor application procedures are not well-suited. More specifically, the Board is tasked with analyzing not just competitive harm or impacts, but also the possibility of higher prices and collusion. Union Pacific Corp.—Control and Merger—Southern Pacific R.R. Corp., 1 STB 233 (1996), 87. Within this inquiry lies several subsequent layers of necessary rate projections analyses based on the variety of carriers operating within the region. *Id.* at 101 (“We do not think it is valid to apply rate projections based on grain traffic to other categories of 3-to-2 traffic that have markedly different transportation characteristics.”). At this early procedural

junction, it is impossible to adequately assess the propriety of the Applicants' requests.

- 3. If accepted as a minor transaction, the Board should expand the current 30-day evaluation period to allow interested parties sufficient opportunity to assess the proposed transaction, comment on its merits, and propose protective conditions.**

Notwithstanding the State of Vermont's vehement objections to the Application as proposed, were it accepted as a minor transaction, the Board must allow parties additional time to study, request additional materials and clarification, and propose mitigation measures on a proposal that will fundamentally alter the regional competitive landscape. VTrans offers the following schedule, which mirrors those currently proposed by VRS and the Commonwealth of Massachusetts Department of Transportation ("MassDOT"):

- Day 30: Board accepts application and establishes schedule. Discovery begins.
- Day 45: Notices of intent to participate must be filed with the Board
- Day 105: Comments due from all parties, including all interested Attorneys General and Secretaries of Transportation, on the transportation merits of the Application.
- Day 135: Responses to comments on the transportation merits of the Application due. Applicants' rebuttal in support of the application due. Close of record.
- Day 180: Board serves final decision.

Conclusion

In conclusion, Applicants' proposed transaction has significant regional transportation impacts. These impacts are insufficiently explored in the current "minor" transaction application, thus preventing the Board from undertaking a meaningful review of its potential anticompetitive impacts. Even if these issues were further developed, the transaction itself raises serious questions about anticompetitive effects that far outweigh its ability to meet public interest in significant transportation needs. Therefore, the State of Vermont opposes the application. Should the Board accept the application as filed, we respectfully request that the Board adopt the above-proposed schedule as the current review period is unreasonable given the seismic impact the proposal will have on regional transportation.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Jenny E. Ronis', is positioned above a horizontal line.

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cc: Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN
RAILROAD, PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY,
SPRINGFIELD TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD
COMPANY, AND VERMONT & MASSACHUSETTS RAILROAD COMPANY

Finance Docket No. 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

VERIFIED STATEMENT OF DANIEL P. DELABRUERE

1. **Background.** My name is Daniel P. Delabruere. I have been employed by the State of Vermont's Agency of Transportation (VTrans) since July 2010. I currently serve as VTrans' Rail & Aviation Bureau Director. I am responsible for developing programs, policies and procedures to achieve the goals and objectives of the State's railroad programs. My duties include oversight of State-owned railroad properties and facilities, managing leases with operating railroad companies, and oversight of the State's railroad projects from conceptual phase through completion. I am responsible for communication and coordination with federal agencies, other state and provincial agencies, the State's congressional delegation, the directors of

rail programs in other states, the American Association of State Highway and Transportation Officials (AASHTO), and many other groups. I maintain a high level of contact with operating railroads, Amtrak, municipal officials, consulting firms, and the general public. I directly engage with Vermont rail shippers regarding their transportation needs. I represent VTrans as a member of different in-state and out-of-state committees such as the Vermont Rail Advisory Council and the AASHTO Standing Committee on Rail. I represent VTrans in negotiations with freight railroads, Amtrak, and neighboring states.

2. Purpose. I am submitting this Verified Statement in support of VTrans' opposition to the applicants' proposal to use the Board's "minor transaction" and "exemption" procedures to apply for regulatory approval to acquire control of and merge with Pan Am Systems, Inc., Pan Am Railways, Inc. (PAR), and various affiliated entities. VTrans' concerns extend to the applicants' companion proposal to install an independent carrier, the Pittsburg & Shawmut d/b/a Berkshire & Eastern (B&E)—a Genesee & Wyoming, Inc. (GWI) subsidiary—to take over the operations presently conducted by Pan Am Southern, LLC (PAS).

3. Vermont Rail Plan. As required by federal law, Vermont is currently finalizing the five-year update to its Rail Plan.¹ The draft plan documents Vermont's many initiatives to encourage development of freight and passenger rail service, which have fostered modest growth in rail freight traffic since the early 2010s. According to the draft plan, "[m]aintaining and improving access to regional

¹ Vermont Rail Plan (Feb. 2, 2021 Draft): [Microsoft Word - Draft Rail Plan 2-2-2021 V5.docx \(vermont.gov\)](#)

short-haul markets and competitive Class I connections is vital” to future growth. See page 36, Section 5.2.

4. Regional Impacts of Interconnected Transactions. The interdependent transactions that are the subject of these proceedings have regional impacts that transcend a simple, end-to-end transaction:

- CSXT, a Class I carrier, seeks to acquire and operate PAR, the most extensive network of commonly-owned and operated railroad lines in New England.
- Another Class I carrier, Norfolk Southern Railway Company (NS) is threatened by the CSX-PAR transaction.
- The CSX-PAR transaction threatens PAS, a regional carrier that plays an important competitive role in New England railroad transportation. PAS operates an east-west railroad line across northern Massachusetts and southwestern Vermont that roughly parallels an east-west railroad line across southern Massachusetts already owned by CSX.
- GWI, the largest short-line holding company in the United States and the world, which already has the largest non-Class I railroad presence in New England after PAR and PAS, would expand its role through its new B&E operation. This includes B&E’s taking over the PAS trackage rights operations along the south-north Connecticut River Line between East Northfield, MA and White River Junction to nominally compete with the track owner, New England Central Railroad, Inc. (NECR), an existing GWI

subsidiary. Because of B&E's takeover of the PAS trackage rights operations over the Connecticut River Line, GWI would completely control the interchanges at Bellows Falls and White River Junction, VT. Moreover, GWI, through B&E, also would be taking over PAS operations at the Hoosick Junction, NY interchange.

5. State-owned Railroad; Affected Interchanges. The State-owned railroad lines (all operated by affiliates of the Vermont Rail System [VRS]) that will be affected by the proposed transaction are as follows:

- **Hoosick Junction, NY to Burlington, VT:** In total, this line is about 128 miles long. The State of Vermont acquired the bulk of the line, from the New York/Vermont state line near White Creek, NY to Burlington, VT, in 1964. Since then, Vermont Railway, Inc. (VTR) has leased and operated the line. In 1996—to protect this line's southern access to the national rail network—the State of Vermont acquired from the Boston and Maine Corporation the five-mile-long connecting link between Hoosick Junction, NY and White Creek, which was then added to the VTR lease. At the line's south end, in Hoosick Junction, VTR interchanges with both PAS and NS.² At its north end, in Burlington, VTR interchanges with New England Central Railroad, Inc. (NECR), a GWI subsidiary. Near the line's midpoint, at Rutland, VT, VTR

² The VTR/NS interchange at Hoosick Junction is a “virtual” interchange, with the physical movement of cars moving between VTR and NS handled by PAS. VTR's enhanced ability to interchange with both PAS and NS at Hoosick Junction results from the Board's authorization *in Norfolk Southern Ry. Co, Pan Am Railways, et al.—Joint Control and Operating/Pooling Agreements—Pan Am Southern, LLC*, FD 35147 (STB served Mar. 10, 2009).

interchanges with two other VRS lines—Green Mountain Railroad Corporation (GMRC), which operates southward to Bellows Falls, VT, and the Clarendon & Pittsford Railroad Company (CLP),³ which operates westward to Whitehall, NY, where CLP interchanges with a line controlled by the Canadian Pacific Railway. The segment of this line south of Rutland has experienced a revival since introduction of competitive interchanges at Hoosick Junction in 2009.

- **Bellows Falls, VT to Rutland, VT:** The State of Vermont acquired this 52-mile-long line in 1964. Since then, the line has been leased to and operated by Green Mountain Railroad Corporation (GMRC). In 1997, GMRC became part of VRS. At the line's south end, GMRC connects with the north-south Connecticut River Line, interchanging at Bellows Falls with both GWI/NECR (the Connecticut River Line's owner) and PAS (which operates over the Connecticut River Line under a trackage rights agreement). GMRC's ability to interchange with both carriers operating over the Connecticut River line dates back to Amtrak's condemnation of the Brattleboro-Windsor segment of the Connecticut River Line in the 1980s. Over the past 30 years, in large part because of the availability of competition at the Bellows Falls gateway, traffic moving over GMRC has increased significantly.
- **White River Junction, VT to Newport, VT:** The State of Vermont acquired this line—which is approximately 103 miles long—in 1999 (White

³ Although part of VRS, the CLP line is privately owned.

River Junction to Wells River, VT) and 2002 (Wells River to Newport, VT). Since 2002, this line has been operated by Washington County Railroad Corporation (WACR). At this line's south end, in White River Junction, WACR interchanges with both PAS and GWI/NECR. (PAS reaches White River Junction through trackage rights over GWI/NECR.) At its north end, in Newport, WACR interchanges with Central Maine & Quebec Railroad (CMQ), a subsidiary of Canadian Pacific. This line also has experienced steady growth, in large part because of the availability of competitive interchanges in White River Junction.

6. Benefits of Competition. Competition between connecting carriers at interchanges has inherent benefits to shippers and receivers of rail freight all along the VRS lines. One carrier may offer better service and pricing than its competitor. Because of redundancy, one carrier often can step in when the other has service challenges. For example, in 2020 the availability of competition allowed VRS to respond nimbly to service challenges on connecting rail lines such as the partial collapse of the Hoosac Tunnel and First Nations' blockades of several key Canadian railroad routes. Most of Vermont lacks access to natural gas pipelines, instead relying heavily on rail deliveries of fuel oil and propane. During the winter heating season, "just in time" deliveries of fuel oil and propane are critical to life and safety. Similar concerns arise with timely deliveries of critical commodities such as road salt and livestock feeds.

7. “2-to-1 Reduction in Competition” at Affected Interchanges. CSX and NS, as part of the proposed transaction, plan to assign operation of the services west of Ayer, MA, now operated by Springfield Terminal Railway (“ST”) for PAS, to GWI/B&E. See FD 36472 (Sub-No. 5). This means that GWI/B&E service will replace ST service at the Hoosick Junction, Bellows Falls and White River Junction interchanges. Meanwhile, the Hoosick Junction-Burlington VRS line would be bookended both south and north by GWI-controlled interchanges. See Exhibit 1 to Primary Application in FD 36472. While the applicants represent that the two GWI subsidiaries (*i.e.*, NECR and B&E) would operate independently—even over the Connecticut River Line segments where B&E would be dependent on trackage-rights over NECR-owned lines—this representation is inherently implausible. Moreover, the State of Vermont would not have access to any enforcement mechanism to police the interaction of the GWI subsidiaries because it is not a party to the contractual arrangements that would govern GWI/B&E service and pricing.

8. “Knowledge Corridor;” Recent History. The Board has recently had to ensure the competitive status quo is maintained in this region. At present, PAS access to both the Bellows Falls and White River Junction interchanges is dependent on use of the trackage rights by which PAS operates over GWI/NECR-owned Connecticut River Line (which the applicants refer to as the “Knowledge

Corridor”).⁴ Between 2014 and 2018, GWI/NECR litigated before the Board to reset terms and conditions originally set by the Board’s predecessor, the Interstate Commerce Commission (ICC) in 1990, in the wake of Amtrak’s condemnation of the Brattleboro-Windsor segment of the Connecticut River Line. Put simply, the changes sought by GWI/NECR would have rendered PAS use of the trackage rights uneconomical, choking off competitive access to both the Bellows Falls and White River Junction interchanges. In 2017, the Board resolved this dispute largely in favor of PAS, thus maintaining competition along this corridor, including the Bellows Falls and White River Junction interchanges.⁵ Against this background, it requires a tremendous leap of faith to accept the applicants’ representations that two GWI subsidiaries—NECR (track owner) and B&E (trackage rights user)—would maintain meaningful competition along this corridor.

9. Long-Term Anti-Competitive Effects. In the almost six decades that the State of Vermont has owned railroad lines, traditional traffic bases have eroded and all but disappeared. To survive and grow, short-line railroads in Vermont must deftly innovate to acquire new traffic. As a practical matter, this requires the cooperation of connecting railroads to develop routes and rates that can attract and maintain new customers. The success to date of Vermont’s current short-line railroad operator, VRS, is due in large part to the competitive routings presently

⁴ The segment of the Connecticut River Line owned by GWI/NECR over which PAS operates by way of trackage rights is shown in Exhibit A, attached to the March 16, 2021 filing by VRS in FD 36472 and FD 36472 (Sub-No. 5).

⁵ *New England Central R.R., Inc.—Trackage Rights Order—Pan Am Southern, LLC*, FD 35842 (STB served Oct. 31, 2017).

available through the Hoosick Junction, Bellows Falls, and White River Junction interchanges.

10. **The Public Interest.** The State of Vermont has invested hundreds of millions of dollars of public funds to upgrade Vermont’s railroads to maintain and improve access to regional short-haul markets and competitive rail connections through the state as a transportation option, as articulated in the Draft Rail Plan I reference above. In the past 10 years alone, Vermont has invested over \$250 million in rail, including over \$191 million in capital infrastructure and over \$60 million in State-supported passenger rail services through Amtrak.⁶ This investment represents the various levels of Vermont’s government’s determination that the state has a public interest in maintaining these rail connections. The benefits of this investment—growing, reliable, competitive service connecting Vermont to the national rail network—are threatened by the proposed transaction because it would at best reduce the competitive status quo from two carriers to one and at worst divert all rail carriers away from Vermont. In addition, the industries in Vermont that rely on shipments via rail, such as salt distribution centers, could collapse if they are unable to afford salt delivery rates due to a less competitive market.

⁶ At the beginning of each annual legislative session, VTrans, with the Governor’s approval, submits a proposed transportation program for the next state fiscal year (July 1 to June 30) outlining proposed investments. The proposed program, as amended by the Legislature, is enacted into law. See, e.g., Vt. Act No. 121 of 2020 (“An Act Relating to the Transportation Program and Miscellaneous Changes to Laws Related to Transportation”) (Fiscal Year 2021 Transportation Program).

I hereby verify under penalty of perjury, that the foregoing Verified Statement is true and correct Further, I certify that I am qualified and authorized to file this Verification

Executed on March 17, 2021.

/s/ Daniel P. Delabruere

Daniel P. Delabruere

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.

—CONTROL AND MERGER—

PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD, PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND VERMONT & MASSACHUSETTS RAILROAD COMPANY

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Opposition to Application and Petition and Preliminary Comments* has been e-filed this 18th day of March, 2021 via the STB's e-filing system and served by electronic mail per 49 CFR § 1104.12 upon the following parties of record:

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