

BEFORE THE
SURFACE TRANSPORTATION BOARD

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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

APPLICANTS' RESPONSE TO INITIAL COMMENTS

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Dated: March 18, 2021

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

APPLICANTS' RESPONSE TO INITIAL COMMENTS

Applicants¹ hereby respond to the initial comments filed by several interested parties² regarding the procedural schedule and classification of the transactions referred to in the Application. Those transactions, which include the Proposed Transaction and several Related

¹ The acronyms and defined terms used in this Response are the same as those used in the Application.

² These filings include: (1) Notice of Intent to Participate, Opposition to Application and Petition, and Reply to Proposed Procedural Schedule, filed March 16, 2021, by Vermont Rail System ("VRS") ("VRS Opposition"); (2) Comments in Response to Proposed Schedule, filed March 16, 2021, by The Brotherhood of Maintenance of Way Employees [sic] Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical Division; and National Conference of Firemen and Oilers, 32BJ/SEIU ("Allied Rail Unions") ("Allied Rail Unions Comment"); (3) Comments in Response to Proposed Schedule, filed March 16, 2021, by The International Association of Sheet Metal, Air, Rail and Transportation Workers-Transportation Division ("SMART-TD") ("SMART-TD Comment"); (4) Comments in Response to Proposed Schedule, filed March 16, 2021, by The Transportation Communications Union/IAM ("TCU") and the District Lodge 19 of the International Association of Machinists and Aerospace Workers ("IAM") ("TCU/IAM Comment"); (5) Comments in Response to Proposed Schedule, filed March 16, 2021, by The American Train Dispatchers Association ("ATDA") ("ATDA Comment"); (6) Notice of Intent to Participate and Preliminary Comments, filed March 16, 2021, by the Commonwealth of Massachusetts Department of Transportation ("MassDOT") and the Massachusetts Bay Transportation Authority ("MBTA") ("MassDOT/MBTA Comments"); (7) Letter filed March 17, 2021, by the Massachusetts Water Resources Authority ("MWRA") ("MWRA Letter"); (8) Opposition to Application and Petition and Preliminary Comments, filed March 17, 2021, by State of Vermont, Agency of Transportation ("VTrans") ("VTrans Opposition"); (9) Letter filed March 17, 2021, by certain Massachusetts state senators and representatives ("Massachusetts Legislators Letter"); and (10) Comments on Proposed "Minor" Classification of Transaction and on Petition for Exemption, filed March 17, 2021, by Republic Services, Inc., ECDC Environmental, L.C. and Devens Recycling Center, LLC (collectively, "Republic") ("Republic Comments").

Transactions, should be considered by the Board as a unified group of transactions, and they are referred to herein collectively as the “Transaction.”

As explained below, Applicants believe it would be appropriate to adopt a 30-day extension to the deadline for filing comments to provide additional time for interested parties to submit comments and to pursue further private negotiations. However, no party has offered a valid basis for requesting that the Board classify the Transaction as “significant” or to require the Application to be re-filed. The Transaction was carefully structured to eliminate potential competitive harm, enhance competition, and improve the rail network throughout the Northeast. The only thing “significant” about the Transaction is the extent to which it enhances competition and strengthens the rail network in the Northeast.

The Application contains 58 support letters from shippers, government officials and local communities that are eager for the benefits that will be created by the Transaction. Neither the public interest, the STB, nor any of the commenting parties’ legitimate interests in maintaining competition would be served by unduly complicating and extending the Board’s consideration of the Transaction through a re-classification that ignores its overwhelmingly pro-competitive nature. The special interests identified by the commenting parties can be fully addressed through a modified procedural schedule for a “minor” transaction.

I. The Transaction is clearly pro-competitive and in the public interest.

On February 25, 2021, Applicants filed a “minor” Application in the above-captioned proceeding, seeking approval from the Board for CSX’s acquisition of control of the railroads controlled by Pan Am Systems, Inc. (“Systems”), and for CSXT’s merger of certain of those

railroads into CSXT (the “Proposed Transaction”).³ On the same day, NSR and B&E (a wholly owned-subsubsidiary of GWI) filed requests for Board authority directly related to the Application (the “Related Transactions”) in related sub-dockets.⁴

These filings were made almost three months after CSX executed, in November 2020, a Merger Agreement with Systems. CSX did not immediately file an application for STB approval of the transaction because CSX wanted to address any concerns about potential competitive effects before seeking STB authorization. CSX entered into numerous discussions with potentially affected shippers, railroads, public agencies, and communities, to structure a transaction that would enhance competition in New England. As a result of these discussions, the Application and the related requests for Board authority present a comprehensive proposed Transaction to eliminate any potential anticompetitive effects, substantially enhance competition, better integrate New England into the national rail network, and improve rail service for rail customers.

CSX’s acquisition of the PAR System, when considered together with the Related Transactions, is an efficient, end-to-end extension of CSXT’s network into New England that raises no competitive issues.⁵ As to CSX’s acquisition of Systems’ one-half interest in PAS and of the current contract operator of PAS, CSXT, NSR, and GWI (on behalf of its subsidiary B&E)

³ As described in the Application at 2-3, Systems indirectly owns the seven PAR Railroads, which own and operate the PAR System. One of the PAR Railroads, Boston & Maine, also owns a 50% interest in PAS, a 50/50 joint venture between Boston & Maine and NSR. Another of the PAR Railroads, Springfield Terminal, operates the PAR System as lessee of other PAR Railroads, and operates the PAS system as PAS’s contract operator.

⁴ NSR invoked a class exemption in FD 36472 (Sub-Nos. 1-4) to authorize NSR to enter into four trackage rights agreements, while B&E sought Board authority through a petition for exemption in FD 36472 (Sub-No. 5) (the “B&E Petition”) to operate PAS in lieu of Springfield Terminal upon consummation of the Proposed Transaction (the “B&E Transaction”).

⁵ VTrans claims that “the proposed transaction is not solely an end-to-end transaction.” VTrans Opp. at 5. The claim is beside the point. Applicants have asked the Board to consider CSX’s acquisition of the PAR System together with the Related Transactions as a unified whole.

entered into agreements to address potential competitive concerns. Along with the commitments that Applicants have made in the Application, the Transaction will ensure that no shipper on or shortline railroad connecting to the affected lines will lose the benefits of multi-carrier competition. The agreements with NSR and GWI/B&E will strengthen both PAS and NSR as competitive rail carriers providing access to New England. Strong support for the Transaction is reflected in the numerous support letters by shippers and local communities filed with the Application.

Applicants filed the Application for approval of a “minor” transaction because CSX’s efforts and agreements with NSR and GWI/B&E assured that the Transaction met the Board’s legal standard – it *clearly* will not have any anticompetitive harm and *clearly* advances the public interest in a strong multi-carrier New England rail network fully integrated into the national rail network. The issues raised by commenting parties over the proper classification do not meet the criteria established to determine that a transaction is significant,⁶ particularly in light of the core pro-competitive benefits of the Transaction. Those issues are no doubt important to them, but none concern the fundamental nature of the Transaction.

The commenting parties are entitled to ask the Board to consider their particular special interests that are inevitably affected by changes in the rail network, but those individual special interests should not diminish the public interest that Congress and the Board sought to promote by expediting the approval of pro-competitive transactions. The Board is more than able to address their special concerns without complicating the proceeding and delaying the benefits to

⁶ See 49 CFR 1180.2(b); *Railroad Consolidation Procedures: Definition of, and Requirements Applicable to, “Significant” Transactions*, EP 282 (Sub-No. 17) (ICC served August 7, 1992).

the public interest and the many supporting parties. There is no need or basis for re-classifying a transaction that is clearly pro-competitive as a “significant” transaction.

II. Applicants properly filed the Application in a primary docket separate from the Related Transactions.

VRS seeks to derail the current proceeding by arguing that “the Application is incomplete, thanks to the Applicant’s highly-questionable attempt to segregate the B&E-PAS Transaction from the more searching formal application process.” VRS Opp. at 5. VRS states that the Proposed Transaction covered by the Application and the B&E Transaction covered by the B&E Petition “are interdependent parts of a whole, and must be examined by the Board as such.” *Id.* VRS further argues, anticipating comments it intends to make in the full proceeding, that the B&E Transaction “plainly cannot qualify for an individual exemption.” *Id.* at 6.

Ultimately, VRS requests that the Board reject both the Application and the B&E Petition and direct the Applicants and B&E to “re-present” their transactions “in the context of a joint Application” *Id.* at 7. Other commenting parties, such as MassDOT/MBTA, make similar arguments.

Contrary to these assertions, the filings made by Applicants, NSR, and B&E comply fully with the Board’s rules. Those rules require concurrent filing with the primary application of “all directly related applications, *e.g.*, those seeking authority to construct or abandon rail lines, obtain terminal operations, acquire trackage rights, etc.” 49 C.F.R. § 1180.4(c)(2)(vi).

Consistent with long-established practice, these sub-dockets address different requests for STB licensing authority. The Board has processed many control and merger transactions that included directly-related requests for Board authority in sub-dockets to the primary finance docket. *See, e.g., Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, FD 35147 et al., slip op. at 1-2 (STB served June 26, 2008) (explaining that the approval

decision “also embraces” certain related licensing requests in sub-dockets). Those directly-related requests are often made by invoking a class exemption or requesting an individual exemption from otherwise applicable application requirements. *See, e.g., id.*, slip op. at 2 (describing notices of exemption filed in three related sub-dockets).

VRS’s purported rationale for requesting the Application be re-filed is also misguided. VRS states that it is concerned that the Proposed Transaction and the Related Transactions, particularly the B&E Transaction, will not be considered together. But Applicants made it abundantly clear in the Application that it is asking the STB to consider the Proposed Transaction and the Related Transactions together in parallel, as related transactions, on a unified procedural schedule, much as the Board has done in prior control/merger proceedings that included related requests for Board authority. *See CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc.*, 3 S.T.B. 196, 293 (1998) (involving over 30 sub-dockets).

That is why Applicants provided in the Application a full competitive analysis of the Proposed Transaction and the Related Transactions. The information needed by the Board and any interested parties to evaluate all aspects of the Transaction has been provided. The Board does not need to impose the procedural contortions and delays proposed by VRS and other commenters to address their concerns in the context of the unified proceeding proposed by Applicants.

III. The Transaction is not “significant” under the STB’s rules.

The desire of certain commenters for more time to submit comments and engage in negotiations with the Applicants does not justify treatment of an overwhelmingly pro-competitive transaction as “significant.” Nor is there any need to reclassify the Transaction merely to provide them adequate time. Under the relevant statute, 49 U.S.C. § 11325, reclassification as a “significant” transaction would add approximately 75 days to the schedule to

develop the record as compared to a “minor” proceeding. None of the issues raised by commenters should require that amount of time. Instead, if the Applicants’ proposed schedule is too tight for the commenters’ legitimate requirements, Applicants would propose extending the time for the filing of initial comments, as explained below.

A. The Application makes it clear that the Transaction will not harm competition.

Under the STB’s rules, a transaction is “minor” and not “significant” if the STB can clearly determine that the transaction will not have anticompetitive effects or that any anticompetitive effects will be outweighed by public benefits. 49 C.F.R. §§ 1180.2(b), (c). The rules distinguish between “minor” and “significant” transactions to identify transactions for which the Board and interested parties need additional information and additional time to evaluate the transaction and determine whether it meets the STB’s approval criteria. Where the record is clear based on the application, as here, that the transaction will not have anticompetitive effects or that the public benefits outweigh any potential competitive harm, there is no reason to burden the parties and the process with additional, unnecessary information requirements and unnecessary delay.

Contrary to the suggestion by certain commenters, the scope of a transaction or the existence of operating issues that may need to be considered in the approval process does not govern the STB’s decision whether to treat a proposed transaction as “minor” or “significant.” The Board has classified as “minor” many transactions with a broader geographic scope than the Transaction at issue here. *See, e.g., Can. Nat’l Ry.—Control—Wisc. Cent. Transp. Corp.*, 5 S.T.B. 516 (2001) (“CN/WC”); *Genesee & Wyoming Inc.—Control—RailAmerica, Inc., et al.*, FD 35654, Decision No. 5 (STB served Dec. 20, 2012). The CN/WC transaction, which involved the acquisition of over 2,464 route miles, was substantially larger than the Transaction.

The Board has also recently clarified that the treatment of a transaction as “minor” does not preclude an evaluation of concerns raised by parties with special interests or minimize any concerns they may have. The Board stated:

[A “minor”] categorization does not mean that the proposed Control Transaction is insignificant or not of importance. Indeed, the Board will carefully review the proposed Control Transaction to make certain that it does not substantially lessen competition, create a monopoly, or restrain trade and that any anticompetitive effects are outweighed by the public interest. *See* 49 U.S.C. § 11324(d)(1)-(2). The Board also may condition the Control Transaction to mitigate or eliminate any deleterious effects on regional or national transportation.

Norfolk S. Ry.—Acquis. & Operation—Certain Rail Lines of the Del. & Hudson Ry., FD 35873, slip op. at 11 (STB served Dec. 16, 2014).

Only one recent transaction filed as a “minor” transaction was reclassified by the STB as a “significant” transaction and subjected to the more burdensome and lengthier procedural schedule for “significant” transactions. *See Can. Pac. Ry.—Control—Dakota, Minn. & E. R.R. (CP/DM&E)*, FD 35081, Decision No. 2 (STB served Nov. 2, 2007).⁷ The Board explained that it reclassified the transaction because the STB could not tell from the applicants’ economist statement whether there might be competitive effects not adequately investigated by the applicants. *Id.*, slip op. at 6-7.

Here, however, the Board does not need additional information to know whether there are competitive issues that need to be investigated, to assess those issues, or to determine whether they have been properly resolved. Applicants and their economists thoroughly reviewed the market to identify potential competitive issues and addressed them in advance of filing the Application by structuring the Transaction to eliminate the potential for competitive harm. And

⁷ In that case, the STB ruled that the Application, filed as a “minor” application, should be treated as the “notice” required by the STB’s regulations for “significant” transactions. *Id.*, slip op. at 1. If the STB were to treat the Proposed Transaction here as “significant,” which we do not believe would be appropriate, the STB should similarly treat the Application as the required “notice.”

the commenting parties have not identified any competitive issues that Applicants did not address in the Application.

B. VRS and VTrans have not raised any competitive issues that would justify re-classifying the Transaction.

VRS and VTrans argue that the replacement of Springfield Terminal as PAS operator with B&E, a subsidiary of GWI, will harm competition along the Connecticut River line between White River Junction, VT, and East Deerfield, MA, and competition for access to Class I rail carriers at the western end of PAS through Hoosic Junction, MA. *See* VRS Opp. at 4; VTrans Opp. at 2.

Initially, VRS and VTrans fundamentally misunderstand the B&E Transaction and its effects on competition between PAS and GWI-controlled railroads in the area. PAS will continue to exist as an independent railroad. NSR and CSXT (once the Proposed Transaction is consummated) will own PAS, and B&E will operate PAS on a contract basis. B&E will simply receive a fee from PAS for acting as the contract operator of PAS. VRS/VTrans and the owners of PAS all share the same interest in having PAS operated as a competitive, independent railroad. B&E will be contractually obligated to operate in the interest of PAS, not in the interest of other GWI-owned railroads to the detriment of PAS. B&E's contract will be subject to termination if B&E violates this fundamental term of the arrangement. The owners of PAS would not allow B&E to harm competition on the Connecticut River line or elsewhere, because doing so would be against their economic interest.

In any event, VRS and VTrans ignore that Applicants have addressed all potential competitive concerns regarding the B&E Transaction using structural solutions that the STB has repeatedly accepted and imposed in the past. VRS and VTrans are free to ask the Board to consider other approaches, but they cannot legitimately seek reclassification of the Transaction

as “significant” based on potential anticompetitive effects that have been addressed in ways the STB has previously relied on prevent competitive harm. To the extent VTrans seeks more detail on, or amendments to, how these structural solutions will be implemented, *see* VTrans Opp. at 6-7, that can easily be accommodated in the context of a “minor” transaction.

In his Verified Statement in support of the Application, Mr. Sean Pelkey, CSXT’s Vice President Finance and Treasurer, addressed the potential competitive concerns that VRS and VTrans raise in their comments, noting that the VRS currently has access to PAS and NECR, a GWI subsidiary, for movements on the north-south segment of PAS to the north of East Deerfield. While B&E will operate PAS on behalf of and at the direction of PAS, not in the independent interest of GWI, Mr. Pelkey acknowledged that VRS might be concerned that B&E’s affiliation with GWI could affect VRS’s access to other rail connections. He explained that CSXT and NSR have made explicit rate commitments to preserve existing competition for VRS movements to the east through Ayer, MA, and to the west through Hoosic Junction, MA, including rates that will ensure access to both NSR and CSXT at the west end of PAS. CSXT and NSR have also made an explicit haulage commitment to move Vermont Railway traffic between Bellows Falls and East Deerfield. *See* V.S. Pelkey at 15-16.

Rate commitments and haulage arrangements of the type made by Applicants have been widely used by the STB in the past to address potential concerns arising from rail transactions. *See, e.g., Norfolk S. Ry.—Acquis. & Operation—Certain Rail Lines of the Del. & Hudson Ry. Co., Inc.*, FD 35873, slip op. at 18-19 (STB served May 15, 2015) (voluntary agreement to keep pre-transaction contracts and rate authorities in place until they were amended, renewed, or allowed to expire); *Can. Nat’l Ry.—Control—Duluth, Missabe & Iron Range Ry.*, FD 34424, slip op. at 14 (STB served April 9, 2004) (voluntary settlement agreement that imposed haulage and

trackage rights adequately addressed competitive issues); *Can. Nat'l Ry.—Control—Ill. Cent. Corp.*, FD 33556, slip op. at 32-33 (STB served May 25, 1999) (STB condition requiring that CN grant a third-party carrier haulage rights to allow that carrier to serve three shippers in competition with IC).

Applicants used these tools in structuring the Proposed Transaction and Related Transactions to ensure that VRS will not suffer any competitive harm. VRS suggests these approaches might not be adequate because they fail to address the “loss of competitive *service* options.” VRS Opp. at 6, n.4. However, Mr. Pelkey stated that “PAS will commit to providing VTR with service that is the same or better as that provided today on the movements described above.” V.S. Pelkey at 15-16. This service commitment, combined with the structural remedies that PAS will implement, satisfies the STB’s requirement for a “minor” transaction: the lack of anticompetitive effects can clearly be determined based on the Application.

But even if it were impossible to conclude there will clearly be no anticompetitive effects, it is abundantly clear that any competitive harm would be outweighed by the public benefits here. The competitive issues raised by VRS and VTrans are important to those parties and have been addressed by Applicants. But the core objectives of the Transaction focus on connecting the New England rail network more efficiently to the national rail network and strengthening PAS as a provider of competitive access to New England rail customers. The public benefits from enhanced competition in New England and improved rail service far outweigh any potential competitive concerns at the margin of the Transaction – all of which have been fully addressed. And the 58 strong support letters from shippers submitted with the Application show that the transactions are widely viewed as a positive development in the evolution of the rail network in New England.

In the CN/EJ&E transaction, the STB found “the proposed Control Transaction to be a ‘minor transaction’ because it appears on the face of the application that the efficiency and other public interest benefits would clearly outweigh whatever anticompetitive effects may exist.” *Can. Nat’l Ry.—Control—EJ&E W. Co.*, FD 35087, slip op. at 10 (STB served Nov. 26, 2007). The same rationale would apply here. The Board should treat the Transaction as a “minor” transaction even though it must also consider the competitive and public interest effects of the Transaction under 49 U.S.C. § 11324(d).

C. MassDOT/MBTA, MWRA, and the Massachusetts state legislators have not raised any competitive issues that would justify re-classification of the Transaction as “significant.”

MassDOT/MBTA, MWRA, and certain Massachusetts state legislators also each request that the Board consider the Transaction as “significant,” not “minor.” In support, MassDOT/MBTA and MWRA each raise issues that are irrelevant to the Board’s legal standard for determining whether a transaction is “significant” or “minor.” The Massachusetts legislators simply make conclusory statements regarding the scope of the Transaction and provide no legal basis for their request that the Board classify the Transaction as “significant.” While CSXT will continue to work with these parties to address their concerns, there is no need (or support) under the statute or the STB’s rules for classifying this proceeding as “significant” to allow that work to proceed.

MassDOT/MBTA argue that Applicants have not “engaged the Commonwealth in meaningful, or satisfactory, discussions over the proposed transactions’ impacts and appropriate mitigation measures.” *Id.* at 3. CSXT is disappointed by MassDOT/MBTA’s glib characterization of CSXT’s earnest outreach effort. Contrary to MassDOT/MBTA’s claims, CSXT has engaged the Commonwealth of Massachusetts consistently since soon after CSX signed the Merger Agreement to acquire Systems on November 30, 2020. CSXT has a team of

in-house executives specifically dedicated to working with MassDOT/MBTA on this transaction, and that team has communicated numerous times with MassDOT/MBTA regarding their concerns.

As a result of those communications, the Application addressed several concerns raised by MassDOT/MBTA, committing CSXT and B&E to fully “step into the shoes” of Springfield Terminal regarding any agreements or commitments made by Springfield Terminal to MassDOT and MBTA. *See* Application, Ex. 15 at 23-24. Even after the Application was filed, CSXT continued to communicate with MassDOT/MBTA, and CSXT believed that it was close to resolving any such MassDOT/MBTA concerns.

For example, while MassDOT/MBTA attached to their Opposition a letter addressed to CSXT dated January 14, 2021, they failed to acknowledge that on February 26, 2021, CSXT sent a detailed response letter addressing each of the concerns they expressed on January 14. *See* Exhibit A. On the same day, CSXT, NSR, and GWI sent a joint letter to MassDOT committing the three parties to meet regularly with MassDOT to address any concerns regarding the B&E Transaction. *See* Exhibit B.

MassDOT/MBTA and MWRA each raise serious concerns about the safety of the Wachusett Reservoir, over which a PAR System line runs. MassDOT/MBTA Opp. at 3; MWRA Letter at 1-2. CSXT shares these concerns and will continue to discuss this topic with MassDOT/MBTA, MWRA, and any other relevant stakeholders regarding future operations on this PAR System line.

While CSXT will continue to communicate with these parties to reach mutually-agreeable solutions, none of the specific issues raised by these parties warrant re-classifying the Transaction as “significant.” Again, the legal standard for such a determination is whether the

STB can clearly determine that the transaction will not have anticompetitive effects or that any anticompetitive effects will be outweighed by public benefits. The stated concerns do not relate to competition and can be fully resolved during the pendency of this proceeding. Therefore, they should not bear on the Board's classification decision.

D. Republic has not raised any competitive issues that would justify re-classification of the Transaction as “significant.”

As with other commenters, Republic has misunderstood Applicants' expectation that the Board would consider the Proposed Transaction and the Related Transactions as a unified group of transactions for the purposes of the Board's review and approval. While Republic requests that the Board classify the Transaction as “significant,” Republic has raised no competitive issues that would meet the Board's legal standard for classifying the Transaction as “significant.” Moreover, Republic relies heavily on the dictionary definition of the word “significant,” rather than addressing how the Board has interpreted that word through notice-and-comment rulemaking. *See Norfolk S. Ry.—Acquis. & Operation—Certain Rail Lines of the Del. & Hudson Ry.*, FD 35873, slip op. at 11 (STB served May 15, 2015) (treatment of a transaction as “minor” does not mean that the transaction is insignificant or not of importance).

Ultimately, Republic does not oppose the Transaction, and it appears that Republic just wants additional time to comment on the transaction. As discussed below, Applicants encourage the Board to provide additional time for Republic and other interested parties to comment on the Transaction.

IV. The Board should extend the period for comments to address concerns of the commenting parties.

A “significant” and a “minor” transaction differ primarily in two ways—the information that the STB's rules require to be submitted and reviewed and the procedural schedule for review of the application. As to the first difference, none of the commenting parties argue that the

transaction should be treated as “significant” because of the need to review specific information called for only in “significant” transactions. That additional information, which addresses issues like gross ton-mile traffic density charts, *see* 49 C.F.R. § 1180.8(b)(5), would have no bearing at all on the issues that the commenting parties seek to investigate.

As to the second difference, there is sufficient flexibility in the procedural schedule for a “minor” transaction to address the concerns raised by the commenting parties. The Board does not need to re-classify the Transaction as “significant” to provide adequate time for the parties to review and comment on the information submitted in the Application and, as appropriate, negotiate private arrangements. This is shown by the fact that Allied Rail Unions, SMART-TD, TCU/IAM, and ATDA focus their comments exclusively on the need for an extension in the procedural schedule to allow more time for initial comments on the merits, and other commenters ask that if the Transaction is treated as “minor,” there be a similar extension in the procedural schedule.

Applicants asked the Board to establish a schedule that would have comments filed 30 days after the STB accepts the Application. In light of the preliminary comments that have been submitted, Applicants request that the Board consider a 30-day extension to that proposed schedule: comments would be due 60 days after the STB’s acceptance of the Application, with reply comments due 30 days thereafter. No other schedule dates would need to be modified.

Nothing would be gained by further extensions of the regulatory review attendant with the schedule for a “significant” proceeding. But there would be real costs to regulatory delay. This transaction has strong support from shippers and communities in New England. An unnecessary extension of the regulatory proceeding will delay the public benefits that will result from the transaction and could jeopardize the Transaction itself.

V. Conclusion

Applicants request that the Board extend the procedural schedule for filing comments in this proceeding by 30 days to ensure that any parties with legitimate special interests affected by the Transaction have sufficient time to pursue negotiated agreements with Applicants or present their concerns to the Board. The Board should reject the requests to re-classify the Transaction as “significant” or to require the Application to be re-filed. The issues raised by the commenting parties can be adequately addressed with a modest extension to the procedural schedule without unnecessarily complicating the proceeding by treating the Application as “significant.”

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Dated: March 18, 2021

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TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

EXHIBIT A

CSXT's Reply Letter to MassDOT



CSX Transportation
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VIA E-MAIL

February 26, 2021

Ms. Astrid Glynn
Rail and Transit Administrator
Massachusetts Department of Transportation
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Dear Ms. Glynn:

This letter responds to your letter dated January 14, 2021, regarding discussions between the Massachusetts Department of Transportation, Rail and Transit Division (“MassDOT”), the Massachusetts Bay Transportation Authority (“MBTA”), and CSX Transportation, Inc. (“CSXT”) about CSXT’s proposed acquisition of control of Pan Am Systems, Inc. and its subsidiary railroads (collectively, “PAR”). As you know, PAR and Norfolk Southern Railway Company (“NSR”) each own a one-half interest in Pan Am Southern LLC (“PAS”). CSXT’s acquisition of PAR would include control of PAR’s one-half interest in PAS, along with control of Springfield Terminal (“ST”), the contract operator of PAS.

CSX is excited to introduce our customer-centric focus, supply chain solutions and industry-leading operating model to shippers and industries served by PAR. We look forward to integrating PAR into CSX, with substantial benefits to the rail-served industries of the Northeast, and to working in partnership with connecting railroads to provide exceptional supply chain solutions to New England and beyond. We greatly appreciate your team’s engagement with CSXT over recent weeks and your good faith efforts to determine whether MassDOT and MBTA could support a CSXT application before the Surface Transportation Board (“STB”) seeking authorization to control PAR.

Recognizing the concerns raised in the penultimate paragraph of your letter, I am pleased to advise you that CSXT and NSR have reached an agreement regarding operations over PAS that will provide future certainty, maintain competition and enhance rail service in the New England market. While CSXT and NSR will retain ownership of PAS, a subsidiary of Genesee & Wyoming (“G&W”) will take over operations and maintenance of PAS from ST. The selection of a G&W affiliate is based upon our desire to have a regional operator that has a strong working relationship with the key constituents within this region and has a proven record of providing both world-class safety and service.

Our expectation is that G&W’s existing presence, relationships and experience in the region will greatly assist the transition. The attached letter from CSXT, NSR, and G&W provides additional detail about the future of PAS operations. In addition, we wish to emphasize that this G&W affiliate will be the operator of PAS, not the owner of the railroad. Following CSXT’s acquisition of PAR, CSXT and NSR will jointly own PAS. All of PAS’s current

agreements and obligations will remain in place; G&W is stepping into the shoes of ST as operator of PAS.

Your letter also requested further detail regarding potential freight rail traffic changes on PAR lines within the Commonwealth of Massachusetts following CSXT's acquisition of PAR. You also listed specific requested commitments from CSXT. We are pleased to respond to your requests and hope that this response will give you confidence that CSXT's acquisition of PAR will have no adverse impact on MassDOT and MBTA passenger operations. We will also be happy to discuss in detail any questions you may have pertaining to CSXT's STB application, which was filed yesterday, February 25th.

First, as CSXT explains in its application, the transaction will not produce significant changes to either the existing PAR or CSXT routing or volume of traffic. CSXT has no intention of closing routes or lines or diverting traffic away from routes that are currently being used. We plan to implement CSXT's industry-leading operating practices on the PAR system, modernizing and introducing efficiencies to PAR's operations, and emphasizing consistency, reliability, and careful data measurement and management. Our expectation is that all rail users, including passenger service, will benefit from a more consistent and reliable network. Accordingly, we do not anticipate that the transaction will affect any existing passenger operations on the CSXT, PAR or PAS networks.

Second, CSXT understands the importance of passenger service on the lines we will acquire, and our application makes a number of commitments regarding passenger service in Massachusetts.

1. CSXT commits to fully stepping into the shoes of PAR regarding any agreements or commitments made by PAR or ST to MassDOT and MBTA, including with respect to ST's dispatching responsibilities.
2. CSXT commits to continue to locate the ST dispatching operations of MBTA and MassDOT passenger trains in Billerica, MA for the foreseeable future. CSXT will confer with MBTA and MassDOT in the unlikely event that operational considerations require reevaluation of this arrangement.
3. CSXT commits to cooperatively work with MBTA and MassDOT to consider the introduction and expansion of passenger service upon request.
4. CSXT commits to continuing to route traffic from the existing CSXT network onto the existing PAR network through Barbers Station and Ayer, rather than using the Grand Junction Branch. If CSXT sees the need in the future to consistently operate using the Grand Junction Branch from Worcester and Framingham, which we do not currently foresee, CSXT will commit to working cooperatively with MBTA to implement capital improvements to accommodate any changes in CSXT freight service.

We hope and expect that these commitments will demonstrate our serious intention to support existing passenger service on the lines to be acquired. We believe that these commitments address the most significant issues you raised in your January 14 letter. For

the sake of completeness, set forth below are responses to the specific requests set forth in your letter:

1. *CSX will not increase freight service inside the Commuter Rail Area (defined as roughly the network of trackage east of Framingham and south of Haverhill over which MBTA provides scheduled passenger service);*
 - a. As noted above, CSXT does not expect rail traffic volume or freight service levels to change significantly in the foreseeable future.
2. *CSX will assure priority for passenger service within the Commuter Rail Area, and will permit MassDOT/MBTA to assume control of dispatching on both the Knowledge Corridor and over the Commuter Rail Area;*
 - a. As noted above, CSXT will commit to fully stepping into the shoes of PAR regarding any agreements or commitments made by PAR or ST to MassDOT and MBTA, including with respect to ST's dispatching responsibilities. CSXT will also commit to working cooperatively with MassDOT/MBTA to consider revisions to the current PAR/ST arrangements with MassDOT/MBTA, including with respect to dispatching responsibilities.
3. *CSX will accelerate its efforts to reach agreements with MassDOT/MBTA on the use and control of (a) Readville Yard; (b) the Fitchburg-Westminster line segment; and (c) the line proximate to Wachusett Reservoir;*
 - a. CSXT will commit to meeting with MassDOT/MBTA in the near future to reach agreements on these issues.
4. *CSX will assure that PAS and Norfolk Southern Railway Company ("NSR") will confer with MassDOT/MBTA regarding whether Pan Am (and, by extension, Springfield Terminal) will retain its current roles and responsibilities on PAS-owned lines (notably the Knowledge Corridor and the Adam's Branch), and, if so, how those functions will be carried out post-transaction (and also that PAS will negotiate with MassDOT/MBTA regarding the same);*
 - a. As noted in the attached letter, CSXT, NSR and G&W would be happy to schedule CSXT – NSR – G&W quarterly meetings with you and your staff to ensure that the expectations of the Commonwealth of Massachusetts are being met with respect to the operation of PAS.
5. *CSX will assure that freight service to businesses in the Commonwealth will be at least as frequent and reliable post-transaction as currently is the case, or will be better;*
 - a. As discussed above, CSXT does not plan to make any significant changes to the existing PAR or CSXT routes, and CSXT does not expect rail traffic volume on the PAR network to change significantly in the foreseeable future. CSXT expects that CSXT's industry-leading operating practices will increase the reliability and consistency of service on the PAR network.

6. *CSX will agree to negotiate a global agreement with the Commonwealth covering the foregoing rail service and operating issues;*
 - a. CSXT is willing to consider entering into a more formal agreement with the Commonwealth regarding the topics set forth in this letter.
7. *CSX will agree with the Commonwealth to prioritize railroad passenger service in the western part of the Commonwealth, including, but not limited to, CSX's former Boston & Albany main line, and the PAS main line between Ayer to the New York State border;*
 - a. CSXT will commit to fully honor all agreements made by and obligations of PAR and ST with respect to passenger service. CSXT further commits to cooperatively work with MBTA and MassDOT to consider the introduction and expansion of passenger service upon request.
8. *CSX will promptly outline and clarify its intentions with regard to the use of MBTA and MassDOT-owned railroad facilities, including, but not limited to, East Deerfield Yard, the Lawrence Yard offices, and the general offices at Iron Horse Park, in North Billerica; and;*
 - a. CSXT commits to working cooperatively with MassDOT and MBTA to resolve any issues regarding these facilities in CSXT's position as owner of PAR and as one-half owner of PAS.
9. *CSX will commit to prevent against disruption of MBTA and MassDOT capital plans and planned operating systems improvements, including, but not limited to, the planned joint dispatching system upgrades for all MBTA northside rail lines and Pan Am's system, and the horizontal clearance improvements necessary to allow MBTA to expand its use of high-level passenger platforms (e.g., Winchester, Ballardvale, and North Wilmington).*
 - a. CSXT commits to working cooperatively with MassDOT and MBTA on Commonwealth funded projects to develop and implement operating system improvements and construct infrastructure.

We hope and trust that these assurances will allow MassDOT and MBTA to support a CSXT application at the STB seeking authority to control Pan Am, and we look forward to continuing our dialogue with MassDOT and MBTA on these issues.

Sincerely,



Thomas J. Tisa
Head of Business Development

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

EXHIBIT B

CSXT, NSR & GWI's Joint Letter to MassDOT

February 26, 2021

Ms. Astrid Glynn
Rail and Transit Administrator
Massachusetts Department of Transportation
10 Park Plaza
Boston, Massachusetts 02116

Dear Ms. Glynn:

Beginning in 2009, without its own route into the New England and Boston markets to compete with both truck transport and CSX Transportation, Inc. (CSXT), Norfolk Southern Railway Company (NSR) invested \$140 million to form the Pan Am Southern LLC (PAS) joint venture with Pan Am Railways, Inc. (PAR). This new railroad, created from lines and trackage rights formerly held by subsidiaries of PAR, was established to improve rail routes between Albany, N.Y. and the greater Boston area. Its primary line runs between Ayer, Mass. and Mechanicville, N.Y., with important secondary lines, utilizing trackage rights over other railroads, reaching into Vermont and Connecticut. As part of that transaction, PAR's 100 percent owned Springfield Terminal Railway Company (ST) was designated the operator of PAS, and the capital investment provided by NSR was used to significantly upgrade the infrastructure of the PAS lines and create new intermodal and automotive terminals and competitive options for shippers in New England.

In late 2020, CSXT reached an agreement to acquire PAR. Following Surface Transportation Board approval of the proposed CSXT acquisition, CSXT will own both ST (the current PAS operator) and PAR's one-half ownership interest in PAS. NSR and CSXT decided to engage a third party with a strong performance record of safety and service, and agreed to replace ST as PAS operator with an independent railroad subsidiary of Genesee & Wyoming Inc. (G&W). With an independent operator owned by G&W, the competitive nature of PAS will not only be preserved, but will be maintained and enhanced.

PAS is an important part of the rail network in the area. It operates and maintains significant infrastructure, and it hosts and dispatches passenger service for one of the largest metropolitan areas in the nation. NSR, CSXT, and G&W understand that it is of utmost importance to all stakeholders, and particularly MassDOT, that a change of the PAS operator be seamless and that infrastructure investment and service quality are maintained. Following the closing of the transaction, PAS infrastructure investments will be jointly determined and controlled by its shareholders, NSR and CSXT. As two of the largest U.S. rail operators, investing billions of capital dollars annually, their best-in-class engineering expertise and standards will ensure rail integrity for the long term.

(continued)

Ms. Astrid Glynn
Rail and Transit Administrator
Massachusetts Department of Transportation
February 26, 2021

Page Two

The expectation is that PAS service quality in Massachusetts will improve following the closing of the transaction. G&W has owned and operated the safest regional and short line operations in the country for well over a decade and has a consolidated safety record that surpasses the Class I average. In the last 25 years, G&W has started up and acquired more rail operations than any other company and has an outstanding record of customer service.

Competitively, the G&W railroad subsidiary that will operate PAS will have a contractual obligation to operate PAS independently and efficiently. This railroad subsidiary will remain an independent entity from any other G&W railroad and will not be affiliated with CSXT or NSR. The shareholders of PAS intend to, at a minimum, continue the competitive status quo that exists today, while improving the overall service quality and viability of PAS for the long term. Further, the G&W railroad subsidiary that will operate PAS will have full marketing and pricing authority on PAS revenue movements without direct involvement of CSXT and NSR, and it will have every incentive to grow the base of traffic. This traffic growth will come from working cooperatively not only with on-line PAS customers, but also with all connecting Class I and Class III railroads.

G&W has an established and successful history working with state department of transportation agencies and passenger operations. In New England alone, G&W railroads operate and host multiple passenger operations. The New England Central Railroad hosts and dispatches the Amtrak Vermonter over 237 miles between St. Albans, Vt. and Palmer, Mass., and the Connecticut Southern Railroad operates over 70 miles on Amtrak between Springfield, Mass. and North Haven, Conn. In addition, the Providence and Worcester Railroad operates across the Northeast Corridor from Providence to New York City.

Through its existing 105 Class II and III regional and short lines in the United States, G&W demonstrates its long-term focus on:

1. Operating safely. G&W has established a tradition of leading the rail industry in many safety metrics, including the FRA employee reportable injury ratio.
2. Growing its business. G&W actively builds relationships with customers and connecting rail carriers to find and develop new freight growth opportunities.
3. Being a good local neighbor. G&W short line railroads are managed locally, with teams focused on understanding the communities and customers they serve.
4. Working closely with state agencies. G&W actively works together with the state departments of transportation and other state agencies to support growth and safety.
5. Making long-term commitments. G&W is built on a long tradition of starting or acquiring new short lines, either owned or leased, and making long-term investments for safe and sustainable long-term growth.

(continued)

Ms. Astrid Glynn
Rail and Transit Administrator
Massachusetts Department of Transportation
February 26, 2021

Page Three

6. Continuing investment in operating excellence and technology. With a dedicated training center and expertise across all functions, G&W brings significant corporate resources to support local management at all levels. G&W makes significant investments in technology and is deploying the next generation tools to provide its employees with the real-time visibility to manage the business as effectively as possible.

The G&W subsidiary operating PAS will also embrace these business principles and work with all of its stakeholders, including communities, customers and all connecting railroads, to provide superior service.

As part of this transition, we will be happy to schedule CSXT – NSR – G&W quarterly meetings with you and your staff to ensure that the expectations of the Commonwealth of Massachusetts are being met with this change at PAS.

Very truly yours,



Michael R. McClellan
Vice President Strategic Planning
Norfolk Southern Railway Co.



Michael O. Miller
President, North America
Genesee & Wyoming Inc.



Thomas J. Tisa
Head of Business Development
CSX Transportation, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have caused this Applicants' Response to Initial Comments in Docket No. FD-36472, *CSX Corporation and CSX Transportation, Inc.—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*, to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sally Mordi

Sally Mordi
*Attorney for CSX Corporation and
CSX Transportation, Inc.*

March 18, 2021