

302665

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB DOCKET NO. FD 36472 (Sub-No. 5)

ENTERED
Office of Proceedings
July 1, 2021
Part of
Public Record

**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**

**SUPPLEMENT TO
AMENDED PETITION FOR EXEMPTION**

(contains color images)

ERIC M. HOCKY
CLARK HILL PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

JUSTIN J. MARKS
CLARK HILL PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

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

Dated: July 1, 2021

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**

**SUPPLEMENT TO
AMENDED PETITION FOR EXEMPTION**

Pittsburg & Shawmut Railroad, LLC doing business as Berkshire & Eastern Railroad (“B&E”), a Class III carrier, is filing this Supplement (“Supplement”) to the Amended Petition for Exemption filed on April 26, 2021 (the “Amended Petition”), to address questions raised by the Board in Decision No. 3, and to otherwise update the Amended Petition.¹

Clarification of Proposed Operator of Pan Am Southern LLC

As explained in the attached Verified Statement of Leonard Wagner (“Wagner V.S.”), the proposed operator of the lines of Pan Am Southern LLC (“PAS”) is the existing rail carrier Pittsburg & Shawmut Railroad, LLC (“P&S”), which will operate under the business name Berkshire & Eastern Railroad.

P&S is a common carrier railroad subject to the Board’s jurisdiction by virtue of its acquisition of the physical assets of rail lines in Pennsylvania in 2004. *Pittsburg & Shawmut Railroad, LLC - Acquis. Exemption - Buffalo & Pittsburgh R.R.*, FD 34449 (STB served Jan. 22, 2004). Under this transaction, P&S became a rail carrier with a residual common carrier

¹ Capitalized terms not otherwise defined herein shall have the meanings set forth in the Amended Petition.

obligation. *Id.* at 2. As the Board has stated, a non-carrier that acquires an active rail line also acquires the common carrier obligation that goes with it and requires approval under 49 U.S.C. §10901. *See City and County of Denver – Acquisition Exemption – Western Stock Show Assoc. in the City and County of Denver, Colo.*, STB Finance Docket No. 36157, slip op. at 4-5 (served Aug. 9, 2018). Common carrier status remains even when a party arranges by contract with another entity to operate the line. *See City of Austin, Tx--Acquisition--S. Pac. Transportation Co.*, I.C.C. Finance Docket No. 30861, 1986 WL 1166762, at *1 (served Nov. 4, 1986). Although P&S does not currently provide rail service, it remains a common carrier railroad by virtue of its ownership of active rail lines. Those rail lines are currently operated by P&S's parent company, Buffalo & Pittsburgh Railroad, Inc. ("BPRR"). *See Wagner V.S.* at 2.

The P&S-owned rail lines are operated by BPRR, a Class II carrier that also operates over other lines in Pennsylvania and New York that connect with the P&S-owned lines. Exhibit B to the Amended Petition was intended to show the lines of railroad currently owned by P&S that make it a carrier. P&S marked its ownership on the BPRR operating map which may have been confusing. Attached hereto as Exhibit B-1 is a map of the current P&S-owned lines between Freeport and Reesedale, and between Brookville and Driftwood. BPRR will continue to operate the P&S-owned lines in Pennsylvania, but will have nothing to do with the operation of PAS. *See Wagner V.S.* at 2.

P&S has continued to be recognized as a common carrier since the P&S Application. P&S is not listed as a subsidiary railroad of Genesee & Wyoming Inc. ("GWI") on the GWI website because the website is a marketing document to allow customers to find their local serving railroad,

and P&S is not currently providing any rail service.² *See* Wagner V. S. at 3. However, it remains a distinct corporate entity in the GWI corporate organizational charts (*id* at 3), and in legal documents, for example, when GWI has sought authority to control additional railroads, it has consistently listed P&S as one of its commonly controlled railroads. *See e.g.*, Petition for Exemption, Exhibit A, filed on September 1, 2016 in *Genesee & Wyoming Inc. – Acquisition of Control Exemption – Providence & Worcester Railroad Company*, STB Docket No. FD 36064.

If the requested exemption in this Sub-docket is granted and the CSXT-PAR Transaction and the B&E related transaction are consummated, P&S would be the corporate entity / railroad that would be the operator of the PAS Lines. However, to distinguish the proposed operations of the PAS Lines from the rail lines it owns in Pennsylvania, P&S has registered the assumed name of “Berkshire & Eastern Railroad” (“B&E”) and proposes to perform the operations of PAS under that name. Although P&S is not currently an operating carrier, this does not mean that P&S is incapable of operating PAS as B&E. A general manager of B&E will be appointed to manage its operations (and those of no other GWI subsidiary railroads) and B&E expects to hire approximately 159 unionized employees from Springfield Terminal, which employees will be supervised by the general manager and other management personnel. *See* Wagner V.S. at 2-3. P&S doing business as B&E will be (upon Board approval of, and consummation of, the CSXT/PAR Transaction in the primary docket, and the exemption in this Sub-docket) the operator.

² Since P&S doing business as Berkshire & Eastern Railroad has not yet been authorized to operate the PAS Lines by the Board, there is nothing to show regarding B&E on the GWI website at this time.

Benefits of the Proposed Operations of the PAS Lines by B&E

Although B&E is not required to demonstrate the benefits of its proposed operations in order to qualify for an exemption to operate the PAS Lines, the Wagner V.S. describes the benefits of B&E becoming the operator of the PAS Lines.

The Wagner V.S. explains that the operation of the PAS Lines by an independent B&E will create a more focused and independent rail operation creating greater financial stability compared to the current PAS. There will be financial benefits from the B&E operations because the proposed B&E – PAS railroad operating agreement eliminates an inherent conflict of interest that currently exists among PAS, PAR and Springfield Terminal given that the current Springfield Terminal - PAS operating agreement is structured in a manner that results in PAS incurring costs not associated with PAS. Additionally, B&E will be able to provide the same services provide by Springfield Terminal but at a lower overhead cost because B&E can utilize corporate resources (such as training and technology tools) that GWI provides to its railroad subsidiaries, and because the B&E-operated PAS Lines will operate on a standalone basis without the complexity resulting currently from PAS being managed as part of the Pan Am System. Under the proposed B&E - PAS railroad operating agreement, the overhead expenses will be lower than what Springfield Terminal has historically allocated to PAS for the same services.

There will also be operational benefits from B&E's standalone operation of the PAS Lines. Those operations will benefit from the ability of its employees and management to focus solely on the operation of the PAS Lines. In contrast, the employees currently working on PAS are part of the same Springfield Terminal labor agreements that cover the PAR Railroads as well as PAS. Moreover, as explained in the Wagner V.S. at 6, customers and contiguous railroads will benefit from the committed service standards to be established under the Term Sheet Agreement and the

proposed B&E - PAS railroad operating agreement. By contrast, the current Springfield Terminal – PAS operating agreement does not include any required service standards.

The Wagner V.S. at 5-6 also explains that B&E will benefit from the coordination on infrastructure with CSX, NSR and the other GWI affiliated railroads in the region to maximize efficiency of the local infrastructure. B&E expects these coordination efforts to include enhanced coordination among PAS, P&W and CSXT with respect to their respective infrastructure in Barber, Worcester and Gardner to better manage trains and provide capacity redundancy in and through Ayer. B&E expects similar benefits for all parties through shared infrastructure in Springfield, MA and in the central Connecticut corridor. CSXT, NSR and GWI have entered into a Term Sheet Agreement identifying the services to be performed by B&E. CSXT and NSR, as co-owners of PAS, must approve the annual capital budget and have reserved to themselves the right to perform capital maintenance work on the PAS Lines. CSXT and NSR have concluded that because they already have the experience and capabilities to perform large capital projects, there is no need to duplicate this capability in B&E as contract operator of the PAS Lines. This will allow further coordination on infrastructure that will enable B&E to operate the PAS Lines more efficiently.

Another benefit explained in detail in the Wagner V.S. is that B&E, as a subsidiary of GWI, will have access to greater corporate resources, including GWI's safety and training programs. These programs are one reason why GWI's affiliated railroads in New England (NECR, P&W, CSO and St. Lawrence & Atlantic Railroad Company) were able to achieve an FRA reported injury ratio of 0.54 per every 200,000 working hours for the years 2018-2020. This safety performance compares favorably to Pan Am System's combined ratio of 1.22 for the same period (which ratio, on a comparable basis within the short line and regional railroad industry, is in itself a strong result). In furtherance of these safety efforts, all B&E employees will participate in training

programs offered to GWI's affiliated railroads that cover all levels of employees and crafts. These programs are supported by GWI's inhouse operations training center in Jacksonville, FL and dedicated corporate safety and compliance staff that provide services to GWI's affiliated railroads. Wagner V.S. at 7-8.

In addition, the Wagner V.S. explains that the efficiency of B&E's operation of the PAS Lines will benefit from in the implementation of technology tools that will exceed what Springfield Terminal currently utilizes. B&E will strive to fully integrate technology, operational excellence and information management in a seamless fashion to maximize value creation for PAS and its customers. This effort will include: utilizing data analytics and tie / rail testing data to optimize infrastructure capex spend by PAS and improve safety; implementing leading-edge tools at locomotive and car repair shop operations to improve asset availability; using real-time GPS tracking and operational data to improve asset utilization and customer service; deploying real-time mobile reporting apps to increase frontline staff's productivity and responsiveness; and developing robotics process automation tools to automate repetitive tasks giving team members more time to focus on core operations and safety initiatives.

The Wagner V.S. at 9-10 also explains that B&E as the contract operator of the PAS Lines will have a positive impact on passenger and commuter operations on the PAS Lines because B&E recognizes the importance of those operations and will be required to comply with all PAS contractual commitments in respect thereof. In addition, GWI's affiliated railroads have a long history working with passenger and commuter operators to improve safety and performance of both freight and passenger carriers, and that experience will be shared with B&E.

Springfield Terminal Assignment of Operating Rights

A draft of the proposed assignment of operating rights by Springfield Terminal to B&E was attached to the Amended Petition as Exhibit D. The parties have had further negotiations with respect to the terms of the assignment, and an updated draft is attached hereto as Exhibit D-1 for the Board's reference.

CONCLUSION

For the reasons set forth above and in the Amended Petition, 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
ERIC M. HOCKY
CLARK HILL PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

JUSTIN J. MARKS
CLARK HILL PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

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

Dated: July 1, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Supplement to Amended Petition for Exemption was served on all parties of record in this proceeding by U.S. first class mail, postage pre-paid, or by email.

/s/ Eric M. Hocky

Eric M. Hocky

Dated: July 1, 2021

EXHIBIT B-1

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



Genesee & Wyoming (G&W) Railroads

- **BPRR** Buffalo & Pittsburgh Railroad, Inc.
- **P&S** Pittsburgh & Shawmut Railroad, LLC
- Interchange Locations
- Dashed line indicates Trackage Rights.

EXHIBIT D-1

REVISED ASSIGNMENT OF OPERATING RIGHTS

ASSIGNMENT AND ASSUMPTION OF OPERATING RIGHTS

This Assignment and Assumption (“Assignment”) is made as of _____, 2022, between Springfield Terminal Railway Company (“STR”) and Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad (“B&E”).

WHEREAS, STR is the contract 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, and to merge STR and other PAR subsidiaries into CSXT (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, STR would be replaced as the contract 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, any and all of its common carrier service rights as the contract operator of the PAS Lines.
2. B&E hereby assumes and accepts the assignment of any and all of STR’s common carrier service rights as the contract operator of the PAS Lines.
3. As a result of the assignment to B&E, STR’s right and obligation to provide common carrier service as the contract operator of the PAS Lines has been assumed by B&E, and STR will have no further right or obligation to provide common carrier service as the contract operator of the PAS Lines.

4. This Assignment, and each of the actions set forth above, is and shall be effective as of _____, 2022.

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption 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:

VERIFIED STATEMENT OF

LEONARD WAGNER

My name is Leonard Wagner, and I am currently the Senior Vice President of the Northern Region railroads of Genesee & Wyoming Inc. (“GWI”), and have served in that position since February 2020. I previously led GWI's former Northeast Region railroads since 2017. I joined GWI with the 2008 acquisition of the former Ohio Central Railroad System and served as Vice President of Operations of the Ohio Central Railroad and for the East division of GWI's former Midwest Region railroads. Prior to that, I held various positions with Conrail in operations, customer service and sales.

In my current role as Senior Vice President of the Northern Region railroads, I also serve as President of the various GWI affiliated railroads comprising the region, including Pittsburg & Shawmut Railroad, LLC (“P&S”) and the other railroads operating in New England, those being Connecticut Southern Railroad, Inc. (“CSO”), New England Central Railroad, Inc. (“NECR”) and Providence and Worcester Railroad Company (“P&W”). As such, I am familiar with the New England railroad market and operations, as well as the relationship between GWI’s affiliated railroads and the other carriers that operate in the region, including CSX Transportation, Inc. (“CSXT”), Norfolk Southern Railway Company, Pan Am Southern LLC (“PAS”), the various Pan Am Railways railroads (the “PAR Railroads”), such as Springfield Terminal Railway Company (“Springfield Terminal”), and the various railroads comprising the Vermont Rail System (“VRS”). In this role, I have been involved on behalf of GWI in the analysis of the proposed acquisition by CSX Corporation and CSXT (collectively, “CSX”) of the various PAR Railroads that is the subject of the Amended Application in Docket No. FD 36472. Additionally, I have been involved in the analysis and negotiation of agreements relating to the proposed operation of the rail lines of PAS by P&S (doing business as Berkshire & Eastern

Railroad (“B&E”)) that is the subject of the Amended Petition in Docket No. FD 36472, Sub-Docket No. 5 (the “Amended Petition”).

I am providing this verified statement in support of the Supplement to Amended Petition being filed in Sub-Docket No. 5, and to address certain questions raised by the Surface Transportation Board (the “Board”) in its Decision No. 3.

1. The proposed operator of the PAS rail lines is Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad.

The proposed operator of the rail lines of PAS is P&S, an existing indirect subsidiary of GWI. P&S is a common carrier railroad by virtue of its ownership of certain railroad lines in Pennsylvania and authority from the Board. P&S does not perform any common carrier service at this time. Those rail lines are currently operated by P&S’s parent company, Buffalo & Pittsburgh Railroad, Inc. (“BPRR”), a separate corporate entity, a Class II railroad and a direct subsidiary of GWI. BPRR will have no involvement in the proposed operation of the PAS rail lines which are located in Vermont, Massachusetts, Connecticut and in eastern New York. The PAS rail lines are located geographically distanced from the rail lines owned and operated by BPRR.

In operating the rail lines of PAS, P&S will operate under the business name “Berkshire & Eastern Railroad”. B&E is not a separate corporate entity; it is just the assumed name under which P&S will operate the rail lines of PAS in order to distinguish the proposed operations of the PAS rail lines from the rail lines P&S owns in Pennsylvania.

Following consummation of the CSXT-PAR Transaction (as defined in the Amended Petition) and the B&E related transaction, a general manager of B&E will be appointed. The general manager will be solely responsible for the operations of B&E (and no other GWI affiliated railroads). B&E expects to hire approximately 159 unionized employees from

Springfield Terminal to operate the PAS rail lines. These employees will be supervised by the general manager and other management personnel.

P&S is not currently marketed on the GWI website because it is not currently providing any carrier services. However, it remains as a distinct corporate entity in the GWI corporate organizational charts. Following consummation of the CSXT-PAR Transaction and the B&E related transaction, B&E will be added to the GWI website to provide PAS customers and connecting railroads with appropriate marketing information.

2. Operation of PAS by an independent operator will correctly align incentives to the benefit of PAS, its customers, and its connecting railroads.

Following the start-up of operations, B&E will operate PAS as a more focused and independent rail operation with greater financial stability than PAS has currently. Run by B&E, benefits will accrue to PAS: (i) contractually and financially, as the structure of the proposed B&E – PAS railroad operating agreement will eliminate inherent conflicts of interest that exist currently among PAS, PAR and Springfield Terminal; and (ii) operationally, as PAS will be run independently from PAR and Springfield Terminal instead of being operated and marketed as part of Pan Am Systems.

Unlike Springfield Terminal operations of PAS today, B&E will operate PAS as a distinct entity with the ability to adjust operations as required without consideration for how it might impact, or be impacted by, the PAR Railroads and Springfield Terminal as a whole, including any operational areas where the PAR Railroads run over PAS trackage and where Springfield Terminal may be conflicted, favoring one operation over the other.

The current Springfield Terminal – PAS railroad operating agreement is encumbered by an inherent conflict of interest that will be eliminated under the proposed B&E – PAS railroad operating agreement. Under the current agreement, PAS bears significant overhead costs, which

costs Springfield Terminal incurs from operating both the PAR Railroads and PAS, a portion of which are simply passed through as allocations from Springfield Terminal. As a result, this structure leads to PAS incurring material costs it might not otherwise incur as a standalone rail carrier. Further, as required in the current Springfield Terminal – PAS railroad operating agreement, these corporate costs are allocated between PAR and PAS according to the relative volumes and revenues of each railroad as a percentage of the whole. As structured, this cost allocation creates potential misalignment of interests, with the PAR Railroads, 100% owned by Pan Am Railways, benefiting from allocating more expense to PAS, which is only 50% owned by Pan Am Railways. Additionally, PAS's financials and expenses are subject and exposed to the relative success or failure of the PAR Railroads. For example, if a major shipper on the PAR Railroads were to close, a material amount of overall overhead costs would be shifted from PAR to PAS due to an event unrelated to PAS.

Although this structure could also flow to the benefit of PAS if the roles were reversed, the fact is that PAS has a more diversified customer base with less exposure to large customers. The potential earnings volatility of the PAR Railroads, which subjects PAS to events occurring outside its control, or even related to it, creates an environment of inherent instability that could negatively impact PAS's ability to make consistent and independent capital spending and operations planning decisions. This inherent conflict of interest also leads itself to potentially preventing an adjustment of operations or overhead expenses that benefit PAS, but not the PAR Railroads, or the incurrence of overhead initiatives or costs that benefit the PAR Railroads but not PAS.

Under the proposed B&E railroad operating agreement, the overhead expenses that were previously allocated to PAS by Springfield Terminal will be fixed at a lower level than

Springfield Terminal has historically charged to PAS for these same services. B&E can provide the same services at a lower cost for two reasons. First, B&E will be able to draw on the corporate resources that GWI provides to its railroad subsidiaries, which GWI is able to provide on a more cost-effective basis than Pan Am Railways. Second, the lower costs reflect the reduced complexity of operating PAS on a standalone and independent basis rather than as part of Pan Am Systems.

Finally, whereas all current employees working on PAS today are part of the same Springfield Terminal labor agreements that cover both the PAR Railroads and PAS, B&E employees, labor agreements and operations will be dedicated to PAS operations only. The employees and management of B&E will be free to focus on PAS's operations and labor agreements.

3. B&E will benefit from coordination on infrastructure with CSX, NSR and other GWI affiliated railroads in the region.

With a focus on optimizing capacity, although B&E will be commercially and operationally independent from CSXT, NSR and GWI's affiliated railroads in the region (i.e., NECR, P&W and CSO), it is expected that all these parties will work together to maximize the efficiency of the local infrastructure, with any coordination between B&E and any of NECR, P&W and CSO being subject to the approval of CSXT and NSR as the members of PAS. These efforts are expected to include enhanced coordination among PAS, P&W and CSXT with respect to their respective infrastructure in Barber, Worcester and Gardner to better manage trains and provide capacity redundancy, particularly for traffic in and through Ayer. B&E would also expect to achieve similar benefits for all parties through shared infrastructure in Springfield, MA and in the central Connecticut corridor.

CSXT, NSR and GWI have entered into a Term Sheet Agreement identifying the services to be performed by B&E. CSXT and NSR, as co-owners of PAS, must approve the annual capital budget and have reserved to themselves the right to perform capital maintenance work on the PAS Lines. CSXT and NSR have concluded that because they already have the experience and capabilities to perform large capital projects, there is no need to duplicate this capability in B&E as contract operator of the PAS Lines, which should enable B&E to operate the PAS Lines more efficiently.

GWI's affiliated railroads in the New England region have established themselves as strong partners to other railroads when those operations have faced emergency situations and have provided alternative routings or stepped in to provide service when needed. For example, NECR handled traffic on behalf of PAS when the Hoosac tunnel was closed for several months in 2020 and NECR also provided detour rights to VRS both in the aftermath of tropical storms and, most recently, in 2020 when VRS's mainline was closed for several weeks due to a Vermont Agency of Transportation road project in Middlebury, VT. We expect this type of coordination to continue following B&E's operation of the PAS rail lines.

4. Better defined service commitments will allow B&E to provide better service than what is provided today.

Following the start-up of B&E's operations over the PAS rail lines, customers and contiguous railroads will have a higher level of committed service than they do currently. Under the Term Sheet Agreement and the proposed B&E railroad operating agreement, B&E will have committed service standards, which do not exist in the current Springfield Terminal – PAS operating agreement today.

5. B&E will have access to GWI's superior safety, operating and technology programs.

Additionally, B&E, as a subsidiary of GWI, will benefit from the greater corporate resources available to all of GWI's owned, leased and contract operated railroads, such as its safety programs. In regard to safety, GWI's affiliated railroads continue to be a clear leader, not just for the short line and regional railroad industry, but the rail industry overall. It should be noted that between 2018 and 2020 the GWI affiliated railroads in New England (NECR, P&W, CSO and St. Lawrence & Atlantic Railroad Company) had an FRA reported injury ratio of 0.54 per every 200,000 working hours, highlighted by P&W's injury free 2019. This performance compares to Pan Am System's combined ratio of 1.22 for the same period, which ratio, on a comparable basis within the short line and regional railroad industry, is in itself a strong result.

All B&E employees will participate in training programs offered to GWI's affiliated railroads that cover all levels of employees and crafts. These programs are supported by GWI's inhouse operations training center in Jacksonville, FL and dedicated corporate safety and compliance staff that provide services to GWI's affiliated railroads. Training is continuous and all B&E employees will participate in on-going training and safety assessments, including operating rules refresher classes and locomotive and conductor review and testing. B&E management also will participate in on-going training, such as leadership training, Target Zero safety workshops (based on DuPont safety programs) and Train the Trainer seminars.

Another benefit of B&E becoming the contract operator of the PAS rail lines relates to technology and the efficiency improvements that will be associated with B&E operations. Currently, Springfield Terminal uses limited technology as part of its operation of the PAS rail lines. B&E will utilize the full suite of technology tools and applications available to GWI's affiliated railroads. B&E's goal will be to fully integrate technology, operational excellence and information management in a seamless fashion to maximize value creation for PAS and its

customers. Expected initiatives include using advanced data analytics and tie / rail testing data to optimize infrastructure capex spend by PAS and improve safety, implementing leading-edge tools at locomotive and car repair shop operations to improve asset availability (RailIQ and locomotive inspection applications), using real-time GPS tracking and operational data (Nexxiot GPS and Microsoft PowerBI) to improve asset utilization and customer service, deploying real-time mobile reporting apps (Wabtec mCrew, Union Pacific PST tool and Microsoft PowerApps) to increase frontline staff's productivity and responsiveness, and developing robotics process automation tools (UiPath) to automate repetitive tasks giving team members more time to focus on core operations and safety initiatives.

Commercially, B&E will benefit from access to inhouse industrial development teams, track design and engineering capabilities and other marketing tools and support that are made available to GWI's affiliated railroads, all subject to the limitations contained in the proposed railroad operating agreement.

PAS's customers will benefit from the focus placed on customer service by GWI's affiliated railroads. In regional and short-line railroading, GWI believes close relationships are essential to thoroughly understand customers' service needs. To test this self-perception, GWI engages a leading customer-satisfaction research firm bi-annually to survey customers of GWI's affiliated railroads worldwide. GWI's latest survey overall score of approximately 8.0 meets the benchmark of a truly loyal customer. The response rates from customers are strong and their responses demonstrate that the customers are more satisfied with GWI's affiliated railroads and services than with the trucking industry or the railroad industry as a whole. The highest rated attributes of GWI's affiliated railroads are "Commitment to safety" and "Professionalism of personnel".

6. B&E serving as the contract operator of the PAS rail lines will have a positive impact on passenger and commuter rail operations on the PAS rail lines.

B&E recognizes the importance of passenger and commuter rail operations, both where PAS operates over passenger owned infrastructure and where passenger service operates over PAS and when either dispatching passenger trains or being dispatched by passenger or commuter agencies. B&E will be required to comply with all PAS contractual commitments in respect thereof.

GWJ's affiliated railroads have a long history of similar experience both elsewhere in the U.S. and in New England, which will be shared with B&E. In Oregon, GWJ's Portland & Western Railroad, Inc. hosts, dispatches and operates up to 34 TriMet commuter trains per day on a portion of its line between Beaverton and Wilsonville at speeds up to 60mph. In New England, Amtrak "Vermont" trains operate over 237 miles of NECR's line at speeds up to 79 mph, and are dispatched by a GWJ subsidiary. When evaluating performance within NECR's control, the "Vermont" has achieved an average on time performance rating of 88% over the last three years, with the majority of any delays being related to weather events. NECR actively works with Amtrak to continuously improve safety and performance for both carriers. In addition, CSO operates over 70 miles of the Amtrak-dispatched line between Springfield, MA and North Haven, CT, and P&W operates over both Metro-North and Amtrak controlled lines between Fresh Pond, NY and Providence, RI. Other GWJ railroad operations over commuter lines also exist with: (i) Dallas, Garland & Northeastern Railroad, Inc. operating together with Trinity Railway Express, Amtrak, Denton County Transit Authority and Dallas Area Rapid Transit, all in Texas; (ii) Salt Lake City Southern Railroad Company, Inc. and Utah Railway Company both operate over lines owned by the Utah Transit Authority; and (iii) San Diego &

Imperial Railroad Company, Inc. operates over the San Diego Metropolitan Transit System line in San Diego, CA.

7. No material changes in the operation of East Deerfield yard are planned.

B&E is not planning any material changes in the way the East Deerfield yard is currently operated. Additions and reductions of certain positions as presented in the Labor Impact Statement are driven by increased use of technology, and as reflected in the CSXT-NS Settlement Agreement and the Term Sheet Agreement, by the reservation by CSXT and NS of the right to perform PAS capital work. Moreover, some of the reductions in workforce shown for East Deerfield yard do not actually reflect a reduction in the number of employees that will be working at the yard; rather they reflect that because B&E will operate PAS with a workforce independent of Springfield Terminal and the other PAR Railroads, certain transportation jobs that the PAR Railroads scheduled to start at East Deerfield yard (whether or not their work was actually to be performed at the yard), will be scheduled by B&E to start at other locations on the PAS rail lines. As a result, B&E will have sufficient employees working at East Deerfield yard to operate the yard without any material changes from how it is currently operated.

VERIFICATION

I, Leonard Wagner, Senior Vice President, Genesee & Wyoming Inc. Northern Region and 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 July 1, 2021.



Leonard Wagner