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August 5, 2021

CSXT/PAR-19

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

Re: **STB 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**

Dear Ms. Brown:

CSX¹ is pleased to report to the Board that CSX has reached the enclosed settlement agreement with the Northern New England Passenger Rail Authority (“NNEPRA”) regarding potential issues between CSX and NNEPRA arising out of CSX’s application in the above-referenced proceeding. NNEPRA is the state sponsor of Amtrak’s *Downeaster* passenger rail service between Brunswick, Maine, and Boston, Massachusetts.

Pursuant to paragraph 11 of the settlement agreement, CSX hereby requests that the Board impose the terms of the enclosed settlement agreement as a condition of the Board’s approval of the Application.

¹ The acronyms and defined terms used in this letter are the same as those used in the Amended and Supplemented Application filed in the above-captioned proceeding.

Cynthia T. Brown
August 5, 2021
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Respectfully submitted,

/s/ Anthony J. LaRocca

Anthony J. LaRocca
Peter W. Denton
Sally Mordi
*Attorneys for CSX Corporation and
CSX Transportation, Inc.*

Enclosures

cc: Louis E. Gitomer; All parties of record



August 3, 2021

Maurice O'Connell
Senior Director, State Relations
CSX Transportation, Inc.
Jericho & Bell Crossing
Locomotive Shop
Selkirk, New York 12158

Re: CSX Corporation and CSX Transportation, Inc., et al. –
Control and Merger – Pan Am Systems, Inc., et al.
Surface Transportation Board Docket No. FD 36472

Dear Maurice:

The Northern New England Passenger Rail Authority (“NNEPRA”), a body corporate and politic established under Maine law for the purpose of promoting passenger rail service between points within Maine and points within and outside Maine, and the state sponsor of Amtrak’s *Downeaster* passenger rail service between Brunswick, Maine, and Boston, Massachusetts, enters into this settlement agreement with CSX Transportation, Inc. (“CSX”) to resolve potential issues between the parties arising out of CSX’s amended application in the above-cited matter (the “Application”) currently pending before the Surface Transportation Board (“STB”).

The Application requests approval from the STB of, among other things, the control and merger of Boston and Maine Corporation (“Boston & Maine”), Maine Central Railroad Company (“Maine Central”), Portland Terminal Company (“Portland Terminal”), and Springfield Terminal Railway Company (“Springfield Terminal”) (collectively, the “Pan Am Rail Carriers”)¹ by and into CSX. *Downeaster* trains operate over rail lines in Maine and New Hampshire that are owned and operated by the Pan Am Rail Carriers.² Both before and after the start of the *Downeaster* service in December 2001, NNEPRA has managed the substantial expenditure of public funds that have been used to rehabilitate, maintain, and improve these rail lines, to increase the capacity of these rail lines, to enhance safety, and to sustain and expand the *Downeaster* service. NNEPRA believes it is imperative to preserve and protect these

¹ Upon merger of the Pan Am Rail Carriers or any one of them into CSX, CSX will become the successor to the rights and obligations of those carriers or that carrier.

² *Downeaster* trains operate over rail lines in Massachusetts that are owned by the Massachusetts Bay Transportation Authority. In Brunswick, Maine, *Downeaster* trains operate over a short rail line segment that is owned by the State of Maine.

investments, as well as other *Downeaster*-related investments made by NNEPRA's state and local partners, and to safeguard the regional economic benefits that continue to flow from the federal policy tools that, together with these investments, have made the *Downeaster* service both an important public transportation alternative and a singular success.

In settlement of potential issues between NNEPRA and CSX, the parties agree as follows:

1. Compliance With Current Agreements. Upon obtaining control of the Pan Am Rail Carriers, CSX will comply with the current agreements that pertain to the *Downeaster* service to which the Pan Am Rail Carriers are parties,³ and CSX will dispatch *Downeaster* trains in accordance with federal law and current agreements. If required, CSX will seek Federal Railroad Administration ("FRA") approval of an amendment to CSX's current Positive Train Control implementation plan ("PTCIP") and, as necessary, seek to incorporate the existing Main Line Track Exception ("MTEA") into CSX's PTCIP to allow Amtrak to continue to operate *Downeaster* trains at current service frequencies.⁴

2. Maintenance Activities. Except with respect to emergency repairs, CSX will seek to minimize any disruption to the *Downeaster* service when conducting maintenance activities on the rail lines over which the service operates. Prior to the end of each calendar year, CSX will confer with NNEPRA to discuss CSX's proposed schedule for the performance of maintenance activities on these rail lines during the upcoming calendar year. CSX will take the needs of the *Downeaster* service into consideration when finalizing that schedule.

3. Semi-Annual Schedule Changes. *Downeaster* train schedules typically are adjusted twice a year – once in the spring, and once in the fall. CSX will establish a streamlined process that will enable CSX to review, approve, and implement schedule changes promptly after they are presented by Amtrak.

4. Improvements to/Expansion of Downeaster Service. When requested by NNEPRA, CSX will participate in good-faith discussions with NNEPRA and Amtrak regarding improvements to, or expansion of, the *Downeaster* service.

³ Appendix A (attached) is a list of the current agreements that NNEPRA is aware of, to which one or more of the Pan Am Rail Carriers are parties, that pertain to the *Downeaster* service. The parties, and their successors, to these agreements remain free to amend or replace these agreements by mutual consent if they wish to do so. CSX consents to Amtrak's disclosure to NNEPRA of the economic terms of agreements between Amtrak and CSX pertaining to the operation of the *Downeaster* service, including (without limitation) the amounts that Amtrak pays CSX in connection with Amtrak's operation of the service, and the formulas by which those amounts are calculated.

⁴ FRA has advised Amtrak in writing, and Amtrak and CSX by subsequent conversation, that even though the ownership of the rail lines in Maine and New Hampshire over which the *Downeaster* service operates may change, "FRA's 2010 and 2017 approval of the main line track exception, under 49 CFR § 236.1019(c)(2)(ii), will remain effective, so long as the gross tonnage and the regularly scheduled passenger service on this track do not exceed the volume or frequency cited in the current, FRA-approved PTC Implementation Plan (PTCIP)."

5. Wells Project. NNEPRA has entered into a Construction Agreement for Rail Line Improvements in Wells and North Berwick, Maine, dated February 17, 2021, with Boston & Maine and Springfield Terminal (collectively, the “Railroad”). The Construction Agreement includes a 6-mile extension of the Wells siding and completion of the signal interlocking system necessary to support the siding extension. NNEPRA also has entered into an amendment to its station platform lease with the Railroad that permits NNEPRA to construct a second platform (with high level boarding available to passengers) at the *Downeaster* station stop in Wells, together with stair/elevator towers and a pedestrian bridge.

(a) Upon obtaining control of the Pan Am Rail Carriers, CSX will abide and, prior to any merger, will require the Railroad to abide by the commitments entered into by the Railroad in the Construction Agreement, including:

- (i) the Railroad’s commitment to furnish all labor and equipment (other than certain labor and equipment to be furnished through contracted services, subject to the requirements of the Railroad’s collective bargaining agreements) necessary to perform the project;
- (ii) the Railroad’s commitment that the first \$1.5 million of the Railroad’s charges for labor and equipment furnished by the Railroad will be applied as the Railroad’s in-kind match contribution to the project; and
- (iii) the Railroad’s commitment to permit Amtrak, after completion of the project, to operate a sixth round-trip per day, in accordance with the Construction Agreement, subject to Amtrak and CSX having satisfied joint planning, joint preparation and other processes, and finalizing train schedules.

(b) Upon obtaining control of the Pan Am Rail Carriers, CSX will cooperate with NNEPRA to facilitate the construction of the second platform and related improvements (including the stair/elevator towers and pedestrian bridge) in Wells. To the extent that flagging protection is required during the course of the construction of the second platform and related improvements, CSX will provide or cause the Railroad to provide this flagging protection. This flagging protection is included as a work element of the Construction Agreement, and NNEPRA will pay for this flagging protection in accordance with the Construction Agreement.

6. Annual Work. NNEPRA has entered into an Annual Work Agreement with the Pan Am Rail Carriers for work that will improve the condition of the rail lines in Maine and New Hampshire over which the *Downeaster* service operates.⁵ Upon obtaining control of the Pan Am Rail Carriers, CSX will abide by the commitments contained in the Annual Work Agreement, subject to the requirements of

⁵ The complete current title of the Annual Work Agreement is “Agreement Between Northern New England Passenger Rail Authority and Boston and Maine Corporation/Portland Terminal Company/Springfield Terminal Railway Company/Maine Central Railroad Company for Annual Work on the Plaistow to Brunswick Corridor.” See the First Amendment to the Annual Work Agreement dated May 30, 2014.

CSX's collective bargaining agreements, and will comply with standard flow-down provisions required by the federal agency providing the funding for the work.

7. Future Projects. CSX will cooperate with NNEPRA on future projects to improve the rail lines in Maine and New Hampshire owned or controlled by CSX over which the *Downeaster* service operates, with the overall goal of enhancing safety and reliability, and promoting efficient railroad operations to support improved and/or increased passenger service. These projects may include work performed pursuant to future project-specific agreements, which may include an agreed-upon contribution of labor, equipment and/or materials by CSX. These project-specific agreements will require that CSX comply with standard flow-down provisions required by the federal agency providing the funding for the project, and CSX will comply with these provisions.

8. Positive Train Control. Amtrak has limited funding that can be used to pay for the installation of an Interoperable Electronic Train Management System ("I-ETMS") PTC system on the segment of the *Downeaster* corridor between the Massachusetts/New Hampshire state line and Brunswick Station ("Pan Am's *Downeaster* Corridor"), which will benefit both freight and passenger operations. Upon obtaining control of the Pan Am Rail Carriers, CSX will cooperate with Amtrak and NNEPRA in a good-faith effort to reach the agreements that will be necessary for the installation, operation, and maintenance of a fully-compliant I-ETMS PTC system on Pan Am's *Downeaster* Corridor in accordance with 49 C.F.R. § 236 Subpart I. Upon completion of the installation of the agreed-upon I-ETMS PTC system, CSX will submit a Request for Amendment ("RFA") to its current approved PTCIP for Pan Am's *Downeaster* corridor.

(a) Upon obtaining control of the Pan Am Rail Carriers, CSX will work with Amtrak and NNEPRA to facilitate the installation and any required testing of the I-ETMS PTC system on Pan Am's *Downeaster* corridor. This installation and testing will be completed and paid for in accordance with the agreement reached between CSX, Amtrak, and NNEPRA. CSX will not charge Amtrak or NNEPRA for so-called "soft" costs (e.g. time spent by CSX management) associated with this installation and testing. CSX anticipates that the locomotives it will use to operate freight service over Pan Am's *Downeaster* Corridor already will be fully-equipped to operate using the I-ETMS PTC system and that it will not be necessary to further equip any locomotives for the operation of freight service over the corridor.

(b) The scope of CSX's obligations to maintain the I-ETMS PTC system on Pan Am's *Downeaster* corridor, and the allocation of costs associated with such maintenance, will be agreed on by CSX, Amtrak, and NNEPRA. CSX will not seek to recover maintenance costs beyond those associated with the maintenance of wayside detectors installed on Pan Am's *Downeaster* corridor.

(c) CSX will confer and cooperate with NNEPRA and Amtrak on increasing, where possible, maximum allowable train speeds on Pan Am's *Downeaster* corridor as permitted by class of track, including maximum allowable speeds for *Downeaster* trains. If they wish to do so, NNEPRA and Amtrak may evaluate increasing maximum allowable speeds solely for *Downeaster* trains. CSX will cooperate

with any such effort, which may be conducted either directly or through a third party, at no cost to CSX other than so-called “soft” costs (e.g. time spent by CSX management) incurred in connection with that effort. Any such evaluation, whether performed directly or through a third party, will use fact-based, analytical tools to determine the impacts of increased *Downeaster* train speeds and the incremental maintenance costs (if any) that are solely attributable to increased *Downeaster* train speeds. If the evaluation finds that maximum allowable *Downeaster* train speeds may be increased without unreasonably interfering with CSX’s freight operations, and if NNEPRA and Amtrak so request, CSX will permit *Downeaster* trains to operate at these increased speeds so long as CSX is reimbursed for any incremental maintenance costs that are solely attributable to increased *Downeaster* train speeds.

(d) Once the I-ETMS PTC system has been installed and is fully operational, CSX will confer and cooperate with NNEPRA and Amtrak on increasing *Downeaster* service frequencies beyond those currently agreed on. If NNEPRA and Amtrak elect to evaluate increasing service frequencies, CSX will cooperate with that effort. Any such evaluation, whether performed directly or through a third party, will use fact-based, analytical tools to determine the impacts of increased service frequencies. If the evaluation finds that service frequencies may be increased without unreasonably interfering with CSX’s freight operations, and if NNEPRA and Amtrak so request, CSX will permit *Downeaster* trains to operate at these increased service frequencies.

9. Portland Station Stop Relocation. The *Downeaster* station stop in Portland, Maine, currently is located on Portland Terminal’s Mountain Branch. All *Downeaster* trains destined for Brunswick stop at the Portland station, after which they must undertake a reverse move, over the Mountain Branch and onto the Freight Main Line at CPF 196, before proceeding to Brunswick. Likewise, all *Downeaster* trains destined for Boston stop at the Portland station, and they must undertake a reverse move, from the Freight Main Line at CPF 196 onto and over the Mountain Branch, to reach the current station stop. In order to eliminate these reverse moves, facilitate *Downeaster* operations, and mitigate continued interference with freight operations, NNEPRA is seeking to relocate the *Downeaster* station stop in Portland to a Freight Main Line location between the Fore River Bridge and Congress Street. CSX will support NNEPRA’s efforts in this regard, so long as passenger rail operations at the relocated station stop will not unreasonably interfere with freight operations (taking into consideration the benefit to freight operations that will result from the elimination of reverse moves by *Downeaster* trains). In addition, CSX will lease to NNEPRA, on reasonable terms and conditions, such land owned or controlled by CSX as may be required for the construction, maintenance, and operation of dual station platforms serving both tracks (with high level boarding available to passengers) to facilitate passenger train meets at the station. To the extent that flagging protection is required during the course of site investigation and construction, CSX will provide this flagging protection, and NNEPRA will pay for this flagging protection at CSX’s established rates for flagging protection on public projects.

10. West Falmouth Station Stop. NNEPRA is considering adding a *Downeaster* station stop at or near MP 191 on the Freight Main Line in the vicinity of Maine Turnpike Exit 53 in West Falmouth, Maine.

CSX will support NNEPRA's efforts to evaluate this potential station stop, which would (i) be designed to avoid any freight wide-load concerns without changes to the existing track infrastructure, and (ii) not unreasonably interfere with freight operations. If NNEPRA decides to add this station stop, CSX will support this decision and will lease to NNEPRA, on reasonable terms and conditions, such land owned or controlled by CSX as may be required for the construction, maintenance, and operation of the station platform (with high level boarding available to passengers). To the extent that flagging protection is required during the course of site investigation and construction, CSX will provide this flagging protection, and NNEPRA will pay for this flagging protection at CSX's established rates for flagging protection on public projects.

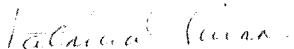
11. Submission to STB. CSX will submit this settlement to the STB on or before August 13, 2021, and request that it be imposed as a condition of the approval of the Application.

12. Support of the Application. Following the submission of this settlement to the STB pursuant to Paragraph 11, NNEPRA will file with the STB in support of the approval of the Application.

Finally, NNEPRA believes that it will be beneficial for Amtrak and CSX to engage in good-faith discussions to reach an agreement on certain operational aspects of the *Downeaster* service. NNEPRA stands ready to help facilitate these discussions.

NNEPRA looks forward to a positive and productive relationship with CSX.

Sincerely,



Patricia Quinn
Executive Director

AGREED TO:

CSX Transportation, Inc.



By _____
Maurice O'Connell
Sr. Director, State Relations

Appendix A

List of Current Agreements¹

1. Agreements Pertaining to Amtrak's Operations.

- A. Terms and Conditions Applicable to Springfield Terminal Railway Company, Boston and Maine Corporation, Portland Terminal Company, Maine Central Railroad Company, and National Railroad Passenger Corporation for Operation Between Massachusetts/New Hampshire State Line and Brunswick, Maine, effective May 29, 1998, as amended.
- B. Letter agreement dated May 27, 2010, between National Railroad Passenger Corporation, the State of Maine (by and through its Department of Transportation), NNEPRA, Maine Central Railroad Company, Springfield Terminal Railway Company, and Central Maine & Quebec Railway US Inc. (regarding the operation of Amtrak trains over State-owned rail lines in Brunswick, Maine), as amended.
- C. Letter agreement dated August 27, 2010, between NNEPRA, Portland Terminal Company, and National Railroad Passenger Corporation (regarding the movement of Amtrak equipment over the Cumberland Mills Running Track in Portland, Maine).

2. Station Platform Leases.

- A. Leases for Maine station platforms (in Freeport, Portland, Old Orchard Beach, Saco, and Wells).
- B. Leases for New Hampshire station platforms (in Dover, Durham, and Exeter).

3. Capital Maintenance/Construction-Related Agreements.

- A. Agreement Between Northern New England Passenger Rail Authority and Boston and Maine Corporation/Portland Terminal Company/Springfield Terminal Railway Company/Maine Central Railroad Company for Annual Work on the Plaistow to Brunswick Corridor, effective January 27, 2006, as amended.
- B. Tie replacement agreements between NNEPRA and the Pan Am Rail Carriers.

¹ This is a list of the current agreements that NNEPRA is aware of, to which one or more of the Pan Am Rail Carriers are parties, that pertain to the *Downeaster* service. This list has been compiled based on NNEPRA's review of selected files that NNEPRA reasonably would expect to contain such agreements. This list may not be a complete list of all of the agreements, to which one or more of the Pan Am Rail Carriers are parties, that pertain to the *Downeaster* service. There may be other agreements between the Pan Am Rail Carriers and third parties that NNEPRA is not aware of, and there may be other agreements that are contained in files that NNEPRA has not reviewed in connection with the compilation of this list. This list does not include construction agreements for completed construction projects.

- C. Rail line capital improvements agreements between NNEPRA and the Pan Am Rail Carriers.
- D. Construction Agreement for Rail Line Improvements Between Portland, Maine, and Brunswick, Maine, dated May 25, 2010, between NNEPRA and the Pan Am Rail Carriers, as amended.
- E. Construction Agreement for Rail Line Improvements in Falmouth, Cumberland, and Yarmouth, Maine, dated February 27, 2017, between NNEPRA and the Pan Am Rail Carriers, as amended.
- F. March 2019 CWR Procurement Term Sheet between NNEPRA and Pan Am Railways.
- G. Construction Agreement for Rail Line Improvements in Newfields, NH and Exeter, NH, dated August 12, 2019, between NNEPRA and Boston and Maine Corporation and Springfield Terminal Railway Company.
- H. Construction Agreement for Rail Line Improvements in Wells and North Berwick, Maine, dated February 17, 2021, between NNEPRA and Boston and Maine Corporation and Springfield Terminal Railway Company.
- I. FY 2022 Portland North Supplemental Project Agreement, dated June 28, 2021, between NNEPRA and the Pan Am Rail Carriers.

4. Agreements Pertaining to Portland Layover Facility.

- A. Agreements contained in deed from Portland Terminal Company to NNEPRA dated September 4, 2001, and recorded in the Cumberland County (Maine) Registry of Deeds in Book 16707, Page 193.
- B. Agreements contained in deed from Portland Terminal Company to NNEPRA dated August 30, 2010, and recorded in the Cumberland County (Maine) Registry of Deeds in Book 28039, Page 68.

CERTIFICATE OF SERVICE

I hereby certify that I have caused this Letter 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.*

August 5, 2021