

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36472 (and embraced sub-dockets)

ENTERED
Office of Proceedings
August 26, 2021
Part of
Public Record

CSX CORP. AND CSX TRANSPORTATION, INC. ET AL
- CONTROL AND MERGER-

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

COMMENTS ON APPLICATION AND RELATED PETITION TO OPERATE

In accordance with 49 U.S.C. §11323 et seq., 49 C.F.R Part 1180, and Decision No. 4 in this proceeding and the embraced dockets, the Brotherhood of Maintenance of Way Employees 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" or "ARU")¹ submit these Comments in response to the proposed acquisition of control of Pan Am systems and related entities, including Springfield Terminal (collectively "Pan Am") by CSX Corp. and related entities ("CSX" or "Applicants") and the planned merger of Pan Am into CSX ("Application"); as well as the Pittsburgh & Shawmut/Berkshire & Eastern ("P&S/B&E") petition ("Petition") in Sub-docket No. 5 to operate the lines of Pan Am Southern ("PAS"), which is embraced in this Finance Docket.

1. The ARU do not support or oppose the proposed acquisition of control of Pan Am by CSX and merger of Pan Am into CSX. Nor do they support or oppose the P&S/B&E Petition.

¹ There is no formal organization known as the "Allied Rail Unions", rather that name has been adopted by these organizations for convenient collective reference in this proceeding; each organization is a separate participant in this proceeding

However, the ARU urge the Board to impose certain conditions on any approval of the Application and the Petition.

2. The Applicants have acknowledged that the employee protective conditions set forth in *New York Dock Railway—Control—Brooklyn Eastern District (Terminal)*, 360 I.C.C. 60 (1979) (“*New York Dock*”), will apply to any approval of their Application. If the Board approves the Application, such approval must be conditioned on application of the *New York Dock* conditions for the protection of employees of CSXT and Pan Am (49 U.S.C. §11326).

3. P&S/B&E has asserted that the *New York Dock* conditions should apply to any approval of the Petition. The ARU agree, and they urge the Board to condition any approval of the Petition on the *New York Dock* conditions.

4. P&S/B&E has stated that it intends to recognize unions currently representing Springfield Terminal’s employees that would be hired by B&E, and to enter into agreements providing “substantially similar terms and conditions to those contained in existing agreements”. Since P&S/B&E made those representations to affected stakeholders (*i.e.* the rail unions), and to the STB, compliance with those representations should be a requirement of any approval of the Petition. P&S/B&E recognition of the unions that currently represent Pan Am/Springfield Terminal employees should therefore be made an express condition of approval of the Petition.

5. Through discovery requests, the ARU have attempted to obtain an explanation of what P&S/B&E means by “substantially similar terms and conditions to those in existing agreements”, and if P&S/B&E would seek to depart from the terms of existing agreements, and if so, how; but P&S/B&E has refused to answer those requests. After P&S/B&E refused to

answer such inquiries following the CSX “minor transaction” filing, the ARU again sought an explanation as to what was meant by “substantially similar terms and conditions to those in existing agreements”, and how P&S/B&E might seek to depart from the terms of the existing Springfield Terminal agreements. P&S/B&E responded:

B&E objects to this request on the ground that it does not seek discoverable facts but rather seeks information about B&E’s future plans and negotiation strategy.” Without waiving this objection, given that the STB has not yet ruled on either the B&E Amended Petition, as supplemented, or the CSXT Supplemental Application, B&E states that it is not in a position to set forth any specifics as to what changes it will seek to the current collective bargaining agreements.

See P&S/B&E response to ARU second discovery request, Exhibit 2 to the attached Declaration of Jason E. Graham and Exhibit 2 to the attached Declaration of Jason Worcester.

6. ARU submit that the P&S/B&E objection is spurious. Most of CSX’s Application and P&S/B&E’s Petition concern future plans. The Petition is entirely premised on the projections of CSXT, NSR and P&S/B&E for a post-transaction PAS, and B&E’s intentions for its operations. B&E will come into existence only if the Application and Petition are approved. P&S/B&E has developed very specific plans for how many employees that B&E will need in each rail craft. P&S/B&E has also stated that it does not intend to staff for major maintenance of way and signal capital projects because CSXT or NSR gangs will likely perform that work. Having developed its plans in detail, and relying on them in seeking approval of the revised Petition, P&S/B&E should know how it wishes to deviate from the terms of the Springfield Terminal collective bargaining agreements. The ARU also recognize that the ultimate terms of agreements that would apply on the PAS territories that P&S/B&E would operate and maintain would be determined by *New York Dock* negotiations or arbitration, but P&S/B&E must know

how it will seek to deviate from the Springfield Terminal agreements, just as it knows how many employees it intends to have in each rail craft. Since P&S/B&E represented to the Board that it expects to propose to the unions “substantially similar terms and conditions to those in existing agreements”, the Board should require P&S/B&E to explain what it means by that representation.

7. P&S/B&E has advised the Board that if the Petition is approved and B&E becomes responsible for operating the PAS, B&E plans to have only 159 employees, whereas Pan Am currently has 214 employees working on the PAS territory. *See* P&S/B&E Labor Impact Statement. More specifically, P&S/B&E state that while there currently are 56 Maintenance of Way positions and 11 Signalman positions on the PAS lines, P&S/B&E plans to employ only 27 Maintenance of Way employees and only 7 Signalmen. In discovery requests, the ARU asked P&S/B&E how it plans to test, inspect, and maintain the PAS signal system and grade crossings, and inspect, maintain and repair PAS right of way, track and structures, with reduced Signal and Maintenance of Way forces, when P&S/B&E projects that the level of traffic on the PAS lines will be as great or somewhat greater than the current level of traffic on the PAS lines. P&S/B&E responded that B&E forces will perform normal track and signal and grade crossings inspection, maintenance and repairs, but that capital improvements and capital maintenance projects will be performed by CSXT or NSR. The implication in that response is that the reduction in Maintenance of Way and Signal forces is solely due to CSXT or NSR performing capital work. Declaration of Jason E. Graham and Declaration of Jason Worcester. But, as is explained by BMWED and BRS General Chairpersons Jason Graham and Jason Worcester,

the planned B&E Maintenance of Way and Signal staffing is below the current PAS Maintenance of Way and Signal staffing for regular inspection, maintenance and repairs; and P&S/B&E seems to have assumed that more PAS workers are involved in capital work than is actually so. In actuality, only 2 Signal positions and 17 Maintenance of Way positions are construction/capital work positions; currently 9 Signalmen and 32 Maintenance of Way workers are engaged in regular inspection, maintenance and repair work (7 rostered maintenance of way positions are presently vacant); but P&S/B&E plans to have only 7 Signal positions and 27 Maintenance of Way positions for regular inspection, maintenance and repair work. Graham Declaration ¶6, Worcester Declaration ¶6. General Chairpersons Worcester and Graham state that staffing Signal and Maintenance of Way workforces at the levels planned by P&S/B&E would not be consistent with safe railroad operations. *Id.* The ARU therefore submit that the Board should require P&S/B&E to explain how it believes it can safely operate the PAS lines with reduced Signal and Maintenance of Way forces, and that the Board should then consider the response in deciding whether to approve the petition and whether to impose additional conditions on approval of the Petition.

Respectfully submitted,

/s/ Richard S. Edelman

Richard S. Edelman

Aaron S. Edelman

Mooney, Green, Saindon, Murphy & Welch, P.C.

1920 L Street NW, Suite 400

Washington, DC 20036

(202) 783-0010

Redelman@MooneyGreen.com

Aedelman@MooneyGreen.com

August 27, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served copies of the foregoing Allied Rail Unions' Comments by First Class Mail to the offices all Parties of Record in this Finance Docket.

Date: August 27, 2021

/s/Richard S. Edelman
Richard S. Edelman

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36472 (and embraced sub-dockets)

CSX CORP. AND CSX TRANSPORTATION, INC. ET AL
B CONTROL AND MERGERB

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

DECLARATION OF JASON WORCESTER

I, Jason Worcester, declare under penalty of perjury, that the following is true and correct and based on personal knowledge.

1. I am General Chairman of the Brotherhood of Railroad Signalmen ("BRS") United General Committee. The United General Committee is responsible for providing BRS representation to Railroad Signalmen employed by Pan Am Railways/Springfield Terminal.

2. Signalmen represented by the BRS are responsible for installing, maintaining, and repairing railroad signal systems and highway-rail crossing warning systems on the rail lines operated by Pan Am Railways/Springfield Terminal.

3. This declaration will address the stated plans of Pittsburgh and Shawmut/Berkshire & Eastern ("P&S/B&E") to inspect and maintain the Signal system of the current Pan Am Southern ("PAS") lines if the P&S/B&E petition to operate the PAS lines ("Petition") is granted.

4. A properly inspected and well-maintained Signal system is essential to safe railroad operations.

5. In the Labor Impact statement in support of the Petition, P&S/B&E state that although Pan Am currently employs 11 Signalmen to perform the Signal work on the PAS lines, P&S/B&E plans to employ only 7 Signalmen to perform Signal work on the PAS lines when

they are operated by P&S/B&E. Worcester Exhibit 1. When BRS, through the Allied Rail Unions, asked P&S/B&E how it plans to test, inspect, and maintain the PAS signal system and grade crossings, and to operate PAS, with a reduced Signal workforce, when P&S/B&E project that the level of traffic on the PAS lines will be as great or somewhat greater than the current level of traffic on the PAS lines, P&S/B&E responded:

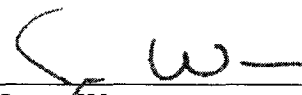
B&E crews will perform normal operating maintenance of the signal systems and grade crossings, but work related to capital improvements and capital maintenance projects will be performed by CSXT or NSR, as referenced in the Term Sheet Agreement. As a result, B&E will require a smaller signal workforce that ST currently utilizes on PAS.

ARU discovery requests, Worcester Exhibit 2.

6. Of the 11 Signalmen referred to by P&S/B&E in the Labor Impact Statement, 9 of them are Signal maintainers (7 maintainers, 1 test man, and 1 relief maintainer). The P&S/B&E response to the ARU discovery request implies that the 4 Signalmen positions that would not be retained by P&S/B&E are all Signal Construction jobs involved in “capital improvements and capital maintenance” work. But that is not so. At least 2 of those jobs are inspection and maintenance jobs. So, under the current plan of P&S/B&E, it will be operating on the PAS lines with the same or more traffic, but less than 80% of the current Signal inspection and maintenance positions. BRS does not believe that the lines can be safely operated with that reduction in the Signal work force, that the Board should require P&S/B&E to explain how it can safely operate the PAS lines with 20+% fewer Signalmen, and that the Board should then consider the response in deciding whether to approve the petition and whether to impose conditions on approval of the petition.

I declare under penalty of perjury that the foregoing is true and correct

08/26/21
Date


Jason Worcester

JASON WORCESTER DECLARATION EXHIBIT 1

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

APPENDIX 1

Impacts of the Proposed Transaction upon Carrier Employees

Impacts of the Proposed Transaction upon Carrier Employees

CSXT

Employees Affected by the Proposed Transaction

Current Location	Job Classification/Craft	Jobs Transferred	Jobs Abolished	Jobs Created	Year
CSXT does not expect to establish or abolish craft positions on CSXT as a result of the Proposed Transaction. Some positions may be transferred but CSXT cannot determine any specifics at this time.		0	0	0	2022
		0	0	0	2023
		0	0	0	2024

PAR Railroads Operated by Springfield Terminal

Employees Affected by the Proposed Transaction

Current Location	Job Classification/Craft	Jobs Transferred	Jobs Abolished	Jobs Created	Year
CSXT does not expect to establish or abolish craft positions on the PAR Railroads affecting Springfield Terminal employees as a result of the Proposed Transaction, but there will be impacts as a result of the related change in operator of PAS. Some positions may be transferred but CSXT cannot determine any specifics at this time.		0	0	0	2022
		0	0	0	2023
		0	0	0	2024

PAS Operated by Springfield Terminal

As a result of the transfer of the operating rights over PAS by PAS and Springfield Terminal to the Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad, and the abolishment of positions on Springfield Terminal, a limited number of employees of Springfield Terminal will be adversely affected. Springfield Terminal employees who do not obtain a position with the new operator or are unable to hold another position on Springfield Terminal and end up furloughed will be eligible for protective benefits under the *New York Dock* conditions. Each chart on the following page indicates the classification, location, jobs transferred, jobs abolished, and jobs created for employees expected to be adversely affected.¹ All employees will be affected in the first year.

¹ The locations where positions are expected to be abolished are where employees report to duty.

REDACTED - TO BE PLACED ON PUBLIC FILE

Classification -->

	Dispatch			Engineer			Trainmen			Maintenance of Way		
	Abolished	Created	Transferred	Abolished	Created	Transferred	Abolished	Created	Transferred	Abolished	Created	Transferred
Billerica	6	5	0	0	0		0	0	0	0	0	0
Ayer	0	0	0	17	20		18	20	0	0	0	0
Deerfield	0	0	0	22	20		29	19	0	38	13	0
Fitchburg	0	0	0	1	0		1	0	0	6	4	0
Gardner	0	0	0	0	0		0	0	0	0	0	0
Hoosick	0	0	0	0	0		0	0	0	0	0	0
Mechanicville	0	0	0	1	8		1	8	0	5	4	0
Mohawk	0	0	0	3	0		9	0	0	0	0	0
North Adams	0	0	0	0	0		1	0	0	6	4	0
Plainville	0	0	0	1	0		3	0	0	1	2	0
Total	6	5	0	45	48	0	62	47	0	56	27	0

Classification -->

	Signals			Carmen			Shop Crafts			Draftsmen		
	Abolished	Created	Transferred	Abolished	Created	Transferred	Abolished	Created	Transferred	Abolished	Created	Transferred
Billerica	0	0	0	0	0	0	0	0	0	0	0	0
Ayer	0	1	0	0	2	0	0	0	0	0	0	0
Deerfield	8	3	0	7	6	0	19	12	0	3	2	0
Fitchburg	0	1	0	0	0	0	0	0	0	0	0	0
Gardner	1	0	0	0	0	0	0	0	0	0	0	0
Hoosick	1	0	0	0	0	0	0	0	0	0	0	0
Mechanicville	0	1	0	1	0	0	0	0	0	0	0	0
Mohawk	0	0	0	0	0	0	0	0	0	0	0	0
North Adams	0	0	0	0	0	0	0	0	0	0	0	0
Plainville	1	1	0	0	0	0	0	0	0	0	0	0
Total	11	7	0	8	8	0	19	12	0	3	2	0

Classification -->

	Clerical			Total		
	Abolished	Created	Transferred	Abolished	Created	Transferred
Billerica	0	0	0	6	5	0
Ayer	0	0	0	35	43	0
Deerfield	4	3	0	130	78	0
Fitchburg	0	0	0	8	5	0
Gardner	0	0	0	1	0	0
Hoosick	0	0	0	1	0	0
Mechanicville	0	0	0	8	21	0
Mohawk	0	0	0	12	0	0
North Adams	0	0	0	7	4	0
Plainville	0	0	0	6	3	0
Total	4	3	0	214	159	0

the intermodal rail cars and loaded onto other intermodal rail cars, resulting in a longer train. Accordingly, existing operations require more intermodal rail cars, and longer transit times as the train must stop while the fileting occurs. In reverse, on a westbound move, the train from the east is single stacked. To create a double-stack train for further movement west, once the train passes west beyond the Hoosac Tunnel, it must be stopped and toupeed, meaning that the single stack containers and trailers are removed from the single stack and double stacked.

Diverting up to one pair of intermodal and automotive trains operated by NSR per day from the PAS line to the double-stack capable CSXT route, which has excess capacity, between Voorheesville, NY and Worcester, MA, and continuing over Providence and Worcester Railroad Company between Worcester and Barbers Station, Boston & Maine between Barbers Station and Harvard, MA, and then over PAS between Harvard and Ayer, allows NSR to (1) avoid fileting and toupeeing the trains, (2) handle shorter trains, and (3) operate a more efficient and timely train. The effect of diverting these trains to the CSXT route will potentially free up capacity on the PAS mainline.

In addition, the Settlement Agreement with NSR involves the addition of capacity on PAS lines near Ayer and the establishment of operating protocols that will improve the efficiency of operations on PAS and ensure the unimpeded movement of traffic from CSXT's lines into New England.

(v) The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.

As noted above, Springfield Terminal currently operates (1) the PAR System, as the lessee of all rail lines owned by the PAR Railroads, and (2) PAS, as a contract operator. Springfield Terminal currently has one workforce. As a result of the Proposed Transaction,

Springfield Terminal will continue to operate the PAR System as it had before the Proposed Transaction, until such time as Springfield Terminal is merged into CSXT, at which time CSXT will operate the PAR System. CSXT does not anticipate a reduction of the work force of Springfield Terminal providing service over the PAR Railroads as a result of its control and eventual merger of Springfield Terminal.

In addition, in advance of the consummation of the Related Transactions, Springfield Terminal and B&E will enter into implementing agreements with employee representatives to allocate the current Springfield Terminal workforce between Springfield Terminal, or CSXT, as operator of the PAR System and B&E as contract operator of PAS. Following these steps, B&E will start operating PAS, replacing Springfield Terminal.

The Applicants do not anticipate any adverse impacts on the number of Springfield Terminal craft employees allocated to operate the PAR System. However, the Applicants understand that B&E does not expect to need the same number of employees who currently operate PAS. Therefore the Applicants expect that some of the Springfield Terminal craft positions will be adversely affected, as explained in more detail in the Labor Impact Statement attached as Appendix 1, and those Springfield Terminal employees will be able to assert their rights under *New York Dock* and any implementing agreements.

The standard labor protective conditions imposed in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) apply to the Proposed Transaction because it involves a class I carrier (CSXT). *See* 49 U.S.C. § 11326(a). As explained in the related Petition for Exemption by B&E, because that Related Transaction in which B&E will replace Springfield Terminal involves two class II carriers (PAS and Springfield Terminal) and one class III carrier

(B&E), Section 11326(a) and *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) also apply to the replacement of Springfield Terminal as the operator of PAS by B&E.

In addition, imposition of *New York Dock* conditions on the Proposed Transaction and the related B&E Petition for Exemption addresses the concerns of rail labor when PAS was created about the possible impact on employees in the event that Springfield Terminal was replaced in the future with another operator. *See PAS Formation Decision*, slip op. at 15-17. Rail labor specifically requested that the Board impose *New York Dock* conditions on any future change in PAS operator. Now that the Proposed Transaction and the related B&E transaction provide for a change in PAS operator, and fall within Section 11323(a), the parties request that *New York Dock* conditions be applied, as mandated by statute, to the change of the PAS operator, as sought by labor when PAS was created, and to any other employees of Springfield Terminal and CSXT who are adversely affected by the Proposed Transaction.

The conditions in *Norfolk & Western* as modified by *Mendocino Coast* are the appropriate conditions for the Related Transaction of the grant of trackage rights to NSR. *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

(vi) *The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. 11324.*

In light of the voluntarily negotiated agreements between CSXT, NSR, and GWI reflected in the Related Transactions, there is no basis for including another railroad in the Proposed Transaction. Whatever potentially adverse competitive effects might have arisen as a result of the Proposed Transaction have been addressed through the Related Transactions. Board exemptions for the Related Transactions are being sought in sub-dockets to this proceeding.

JASON WORCESTER DECLARATION EXHIBIT 2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET No. 36472

**CSX CORP. 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**

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

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD
- OPERATION EXEMPTION -
PAN AM SOUTHERN LLC**

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD
OBJECTIONS AND RESPONSES TO
THE ALLIED RAIL UNIONS'
SECOND DISCOVERY REQUESTS**

Robert S. Hawkins
COZEN O'CONNOR
1650 Market Street,
Suite 2800
Philadelphia, PA 19103
(215) 665-2015
rhawkins@cozen.com

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

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

Dated: August 17, 2021

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD
OBJECTIONS AND RESPONSES TO
THE ALLIED RAIL UNIONS'
SECOND DISCOVERY REQUESTS**

Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad ("B&E") hereby responds to the second discovery requests served on it by Allied Rail Unions ("ARU") pursuant to 49 C.F.R. §1114.21 through 1114.31 on August 2, 2021. All of the General Objections previously served on May 28, 2021 in response to ARU's discovery requests, are incorporated and adopted by reference herein.

RESPONSE TO DISCOVERY REQUESTS

Discovery Request No. 9

In response to the first ARU discovery requests to P&S/B&E, P&S/B&E stated:

B&E states that it currently expects to propose agreements containing terms and conditions that are substantially similar to those contained in the existing collective bargaining agreements between the ARU unions and Springfield Terminal; however, the terms of those agreements must be negotiated through the implementing agreement process and therefore cannot precisely be determined at this time. B&E has not yet determined what, if any, changes to the existing terms and conditions of employment it will propose, but looks forward to negotiating mutually acceptable agreements with the ARU unions representing B&E employees.

- (a) What is meant by "substantially similar"?
- (b) How will P&S/B&E propose in *New York Dock* negotiations to deviate from the terms of the agreements between the BMWED, BRS and SMART-MD and ST?

RESPONSE:

B&E repeats the objection that preceded the response quoted above: "B&E objects to this request on the ground that it does not seek discoverable facts but rather seeks information about B&E's future plans and negotiation strategy." Without waiving this objection, given that the STB has not yet ruled on either the B&E Amended Petition, as supplemented, or the CSXT Supplemental Application, B&E states that it is not in a position to set forth any specifics as to what changes it will seek to the current collective bargaining agreements.

As B&E has previously indicated, B&E anticipates that work related to capital improvements and capital maintenance projects will be performed by the owners of PAS, CSXT and NSR, as referenced in the Term Sheet Agreement.

Respectfully submitted,

/s/ Eric H. Hocky

Robert S. Hawkins
COZEN O'CONNOR
1650 Market Street,
Suite 2800
Philadelphia, PA 19103
(215) 665-2015
rhawkins@cozen.com

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

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

Dated: August 17, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by email
(where email addresses have been provided) or first class mail on all parties to this proceeding.

/s/ Eric H. Hocky

Eric M. Hocky

Dated: August 17, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET No. 36472

**CSX CORP. 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**

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

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD
- OPERATION EXEMPTION -
PAN AM SOUTHERN LLC**

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD
OBJECTIONS AND RESPONSES TO
THE ALLIED RAIL UNIONS'
SECOND DISCOVERY REQUESTS**

Robert S. Hawkins
COZEN O'CONNOR
1650 Market Street,
Suite 2800
Philadelphia, PA 19103
(215) 665-2015
rhawkins@cozen.com

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

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

Dated: August 17, 2021

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD
OBJECTIONS AND RESPONSES TO
THE ALLIED RAIL UNIONS'
SECOND DISCOVERY REQUESTS**

Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad ("B&E") hereby responds to the second discovery requests served on it by Allied Rail Unions ("ARU") pursuant to 49 C.F.R. §1114.21 through 1114.31 on August 2, 2021. All of the General Objections previously served on May 28, 2021 in response to ARU's discovery requests, are incorporated and adopted by reference herein.

RESPONSE TO DISCOVERY REQUESTS

Discovery Request No. 9

In response to the first ARU discovery requests to P&S/B&E, P&S/B&E stated:

B&E states that it currently expects to propose agreements containing terms and conditions that are substantially similar to those contained in the existing collective bargaining agreements between the ARU unions and Springfield Terminal; however, the terms of those agreements must be negotiated through the implementing agreement process and therefore cannot precisely be determined at this time. B&E has not yet determined what, if any, changes to the existing terms and conditions of employment it will propose, but looks forward to negotiating mutually acceptable agreements with the ARU unions representing B&E employees.

- (a) What is meant by "substantially similar"?
- (b) How will P&S/B&E propose in *New York Dock* negotiations to deviate from the terms of the agreements between the BMWED, BRS and SMART-MD and ST?

RESPONSE:

B&E repeats the objection that preceded the response quoted above: "B&E objects to this request on the ground that it does not seek discoverable facts but rather seeks information about B&E's future plans and negotiation strategy." Without waiving this objection, given that the STB has not yet ruled on either the B&E Amended Petition, as supplemented, or the CSXT Supplemental Application, B&E states that it is not in a position to set forth any specifics as to what changes it will seek to the current collective bargaining agreements.

As B&E has previously indicated, B&E anticipates that work related to capital improvements and capital maintenance projects will be performed by the owners of PAS, CSXT and NSR, as referenced in the Term Sheet Agreement.

Respectfully submitted,

/s/ Eric H. Hocky

Robert S. Hawkins
COZEN O'CONNOR
1650 Market Street,
Suite 2800
Philadelphia, PA 19103
(215) 665-2015
rhawkins@cozen.com

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

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

Dated: August 17, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by email
(where email addresses have been provided) or first class mail on all parties to this proceeding.

/s/ Eric H. Hocky

Eric M. Hocky

Dated: August 17, 2021

Finance Docket No. 36472 (and embraced sub-dockets)

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

5. In the Labor Impact statement in support of the Petition, P&S/B&E state that although Pan Am currently employs 56 Maintenance of Way employees on the PAS lines, if the Petition is approved, P&S/B&E plans to employ only 27 Maintenance of Way employees on the PAS lines when they are operated by P&S/B&E. Graham Exhibit 1. When BMWED, through the Allied Rail Unions, asked P&S/B&E how it plans to inspect, maintain and repair the PAS track, right of way and structures with a reduced maintenance of way workforce, when P&S/B&E project that the level of traffic on the PAS lines will be as great or somewhat greater than the current level of traffic on the PAS lines, P&S/B&E responded:

B&E states that it anticipates that work related to capital improvements and capital maintenance projects will be performed by maintenance of way gangs supplied by CSXT or NSR, as referenced in the Term Sheet Agreement. As a result, B&E will require fewer maintenance of way employees than ST currently utilizes on PAS.

ARU discovery requests, Graham Exhibit 2.

6. In the Labor Impact Statement submitted by P&S/B&E, P&S/B&E identified 56 current Maintenance of Way on the PAS portion of the PAR operation. P&S/B&E projected that it would employ only 27 Maintenance of Way workers. The P&S/B&E response to the ARU discovery request implies that the 29 Maintenance of Way employee positions that would not be retained by P&S/B&E are all involved in capital/construction/production work. But that is not so. Approximately 32 current PAR/Springfield Terminal Maintenance of Way workers are engaged in regular track, right of way and structures inspection, maintenance and repair work. The PAR/Springfield Terminal Maintenance of Way Roster (Graham Exhibit 3) shows 56 positions for the PAS lines (see pp. 4-5); of those positions, 7 are currently vacant, 17 are designated as construction/production positions and 32 are positions that perform regular inspection, maintenance and repair jobs. So, under the current plan of P&S/B&E, it will be operating

on the PAS lines with the same or more traffic, but less than 85% of the current Maintenance of Way inspection/maintenance/repair positions (and 70% of the rostered positions). BMWED does not believe that the lines can be safely operated with that reduction in the Maintenance of Way work force, that the Board should require P&S/B&E to explain how it can safely operate the PAS lines with more than 15% fewer Maintenance of Way inspection/maintenance/repair positions, and that the Board should then consider the response in deciding whether to approve the petition and whether to impose conditions on approval of the petition.

I declare under penalty of perjury that the foregoing is true and correct

8-26-2021
Date

Jason E. Graham
Jason E. Graham

JASON GRAHAM DECLARATION EXHIBIT 1

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

APPENDIX 1

Impacts of the Proposed Transaction upon Carrier Employees

Impacts of the Proposed Transaction upon Carrier Employees

CSXT

Employees Affected by the Proposed Transaction

Current Location	Job Classification/Craft	Jobs Transferred	Jobs Abolished	Jobs Created	Year
CSXT does not expect to establish or abolish craft positions on CSXT as a result of the Proposed Transaction. Some positions may be transferred but CSXT cannot determine any specifics at this time.		0	0	0	2022
		0	0	0	2023
		0	0	0	2024

PAR Railroads Operated by Springfield Terminal

Employees Affected by the Proposed Transaction

Current Location	Job Classification/Craft	Jobs Transferred	Jobs Abolished	Jobs Created	Year
CSXT does not expect to establish or abolish craft positions on the PAR Railroads affecting Springfield Terminal employees as a result of the Proposed Transaction, but there will be impacts as a result of the related change in operator of PAS. Some positions may be transferred but CSXT cannot determine any specifics at this time.		0	0	0	2022
		0	0	0	2023
		0	0	0	2024

PAS Operated by Springfield Terminal

As a result of the transfer of the operating rights over PAS by PAS and Springfield Terminal to the Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad, and the abolishment of positions on Springfield Terminal, a limited number of employees of Springfield Terminal will be adversely affected. Springfield Terminal employees who do not obtain a position with the new operator or are unable to hold another position on Springfield Terminal and end up furloughed will be eligible for protective benefits under the *New York Dock* conditions. Each chart on the following page indicates the classification, location, jobs transferred, jobs abolished, and jobs created for employees expected to be adversely affected.¹ All employees will be affected in the first year.

¹ The locations where positions are expected to be abolished are where employees report to duty.

REDACTED - TO BE PLACED ON PUBLIC FILE

Classification -->	Dispatch			Engineer			Trainmen			Maintenance of Way		
	Abolished	Created	Transferred	Abolished	Created	Transferred	Abolished	Created	Transferred	Abolished	Created	Transferred
Billerica	6	5	0	0	0		0	0	0	0	0	0
Ayer	0	0	0	17	20		18	20	0	0	0	0
Deerfield	0	0	0	22	20		29	19	0	38	13	0
Fitchburg	0	0	0	1	0		1	0	0	6	4	0
Gardner	0	0	0	0	0		0	0	0	0	0	0
Hoosick	0	0	0	0	0		0	0	0	0	0	0
Mechanicville	0	0	0	1	8		1	8	0	5	4	0
Mohawk	0	0	0	3	0		9	0	0	0	0	0
North Adams	0	0	0	0	0		1	0	0	6	4	0
Plainville	0	0	0	1	0		3	0	0	1	2	0
Total	6	5	0	45	48	0	62	47	0	56	27	0

Classification -->	Signals			Carmen			Shop Crafts			Draftsmen		
	Abolished	Created	Transferred	Abolished	Created	Transferred	Abolished	Created	Transferred	Abolished	Created	Transferred
Billerica	0	0	0	0	0	0	0	0	0	0	0	0
Ayer	0	1	0	0	2	0	0	0	0	0	0	0
Deerfield	8	3	0	7	6	0	19	12	0	3	2	0
Fitchburg	0	1	0	0	0	0	0	0	0	0	0	0
Gardner	1	0	0	0	0	0	0	0	0	0	0	0
Hoosick	1	0	0	0	0	0	0	0	0	0	0	0
Mechanicville	0	1	0	1	0	0	0	0	0	0	0	0
Mohawk	0	0	0	0	0	0	0	0	0	0	0	0
North Adams	0	0	0	0	0	0	0	0	0	0	0	0
Plainville	1	1	0	0	0	0	0	0	0	0	0	0
Total	11	7	0	8	8	0	19	12	0	3	2	0

Classification -->	Clerical					
	Abolished	Created	Transferred	Abolished	Created	Transferred
Billerica	0	0	0	6	5	0
Ayer	0	0	0	35	43	0
Deerfield	4	3	0	130	78	0
Fitchburg	0	0	0	8	5	0
Gardner	0	0	0	1	0	0
Hoosick	0	0	0	1	0	0
Mechanicville	0	0	0	8	21	0
Mohawk	0	0	0	12	0	0
North Adams	0	0	0	7	4	0
Plainville	0	0	0	6	3	0
Total	4	3	0			

the intermodal rail cars and loaded onto other intermodal rail cars, resulting in a longer train. Accordingly, existing operations require more intermodal rail cars, and longer transit times as the train must stop while the fileting occurs. In reverse, on a westbound move, the train from the east is single stacked. To create a double-stack train for further movement west, once the train passes west beyond the Hoosac Tunnel, it must be stopped and toupeed, meaning that the single stack containers and trailers are removed from the single stack and double stacked.

Diverting up to one pair of intermodal and automotive trains operated by NSR per day from the PAS line to the double-stack capable CSXT route, which has excess capacity, between Voorheesville, NY and Worcester, MA, and continuing over Providence and Worcester Railroad Company between Worcester and Barbers Station, Boston & Maine between Barbers Station and Harvard, MA, and then over PAS between Harvard and Ayer, allows NSR to (1) avoid fileting and toupeeing the trains, (2) handle shorter trains, and (3) operate a more efficient and timely train. The effect of diverting these trains to the CSXT route will potentially free up capacity on the PAS mainline.

In addition, the Settlement Agreement with NSR involves the addition of capacity on PAS lines near Ayer and the establishment of operating protocols that will improve the efficiency of operations on PAS and ensure the unimpeded movement of traffic from CSXT's lines into New England.

(v) The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.

As noted above, Springfield Terminal currently operates (1) the PAR System, as the lessee of all rail lines owned by the PAR Railroads, and (2) PAS, as a contract operator. Springfield Terminal currently has one workforce. As a result of the Proposed Transaction,

Springfield Terminal will continue to operate the PAR System as it had before the Proposed Transaction, until such time as Springfield Terminal is merged into CSXT, at which time CSXT will operate the PAR System. CSXT does not anticipate a reduction of the work force of Springfield Terminal providing service over the PAR Railroads as a result of its control and eventual merger of Springfield Terminal.

In addition, in advance of the consummation of the Related Transactions, Springfield Terminal and B&E will enter into implementing agreements with employee representatives to allocate the current Springfield Terminal workforce between Springfield Terminal, or CSXT, as operator of the PAR System and B&E as contract operator of PAS. Following these steps, B&E will start operating PAS, replacing Springfield Terminal.

The Applicants do not anticipate any adverse impacts on the number of Springfield Terminal craft employees allocated to operate the PAR System. However, the Applicants understand that B&E does not expect to need the same number of employees who currently operate PAS. Therefore the Applicants expect that some of the Springfield Terminal craft positions will be adversely affected, as explained in more detail in the Labor Impact Statement attached as Appendix 1, and those Springfield Terminal employees will be able to assert their rights under *New York Dock* and any implementing agreements.

The standard labor protective conditions imposed in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) apply to the Proposed Transaction because it involves a class I carrier (CSXT). *See* 49 U.S.C. § 11326(a). As explained in the related Petition for Exemption by B&E, because that Related Transaction in which B&E will replace Springfield Terminal involves two class II carriers (PAS and Springfield Terminal) and one class III carrier

(B&E), Section 11326(a) and *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) also apply to the replacement of Springfield Terminal as the operator of PAS by B&E.

In addition, imposition of *New York Dock* conditions on the Proposed Transaction and the related B&E Petition for Exemption addresses the concerns of rail labor when PAS was created about the possible impact on employees in the event that Springfield Terminal was replaced in the future with another operator. *See PAS Formation Decision*, slip op. at 15-17. Rail labor specifically requested that the Board impose *New York Dock* conditions on any future change in PAS operator. Now that the Proposed Transaction and the related B&E transaction provide for a change in PAS operator, and fall within Section 11323(a), the parties request that *New York Dock* conditions be applied, as mandated by statute, to the change of the PAS operator, as sought by labor when PAS was created, and to any other employees of Springfield Terminal and CSXT who are adversely affected by the Proposed Transaction.

The conditions in *Norfolk & Western* as modified by *Mendocino Coast* are the appropriate conditions for the Related Transaction of the grant of trackage rights to NSR. *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), *as modified by Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

(vi) *The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. 11324.*

In light of the voluntarily negotiated agreements between CSXT, NSR, and GWI reflected in the Related Transactions, there is no basis for including another railroad in the Proposed Transaction. Whatever potentially adverse competitive effects might have arisen as a result of the Proposed Transaction have been addressed through the Related Transactions. Board exemptions for the Related Transactions are being sought in sub-dockets to this proceeding.

JASON GRAHAM DECLARATION EXHIBIT 2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET No. 36472

CSX CORP. 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**

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

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD**

**- OPERATION EXEMPTION -
PAN AM SOUTHERN LLC**

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD
OBJECTIONS AND RESPONSES TO
THE ALLIED RAIL UNIONS'
SECOND DISCOVERY REQUESTS**

Robert S. Hawkins
COZEN O'CONNOR
1650 Market Street,
Suite 2800
Philadelphia, PA 19103
(215) 665-2015
rhawkins@cozen.com

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

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

Dated: August 17, 2021

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD
OBJECTIONS AND RESPONSES TO
THE ALLIED RAIL UNIONS'
SECOND DISCOVERY REQUESTS**

Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad ("B&E") hereby responds to the second discovery requests served on it by Allied Rail Unions ("ARU") pursuant to 49 C.F.R. §1114.21 through 1114.31 on August 2, 2021. All of the General Objections previously served on May 28, 2021 in response to ARU's discovery requests, are incorporated and adopted by reference herein.

RESPONSE TO DISCOVERY REQUESTS

Discovery Request No. 9

In response to the first ARU discovery requests to P&S/B&E, P&S/B&E stated:

B&E states that it currently expects to propose agreements containing terms and conditions that are substantially similar to those contained in the existing collective bargaining agreements between the ARU unions and Springfield Terminal; however, the terms of those agreements must be negotiated through the implementing agreement process and therefore cannot precisely be determined at this time. B&E has not yet determined what, if any, changes to the existing terms and conditions of employment it will propose, but looks forward to negotiating mutually acceptable agreements with the ARU unions representing B&E employees.

- (a) What is meant by "substantially similar"?
- (b) How will P&S/B&E propose in *New York Dock* negotiations to deviate from the terms of the agreements between the BMWED, BRS and SMART-MD and ST?

RESPONSE:

B&E repeats the objection that preceded the response quoted above: "B&E objects to this request on the ground that it does not seek discoverable facts but rather seeks information about B&E's future plans and negotiation strategy." Without waiving this objection, given that the STB has not yet ruled on either the B&E Amended Petition, as supplemented, or the CSXT Supplemental Application, B&E states that it is not in a position to set forth any specifics as to what changes it will seek to the current collective bargaining agreements.

As B&E has previously indicated, B&E anticipates that work related to capital improvements and capital maintenance projects will be performed by the owners of PAS, CSXT and NSR, as referenced in the Term Sheet Agreement.

Respectfully submitted,

/s/ Eric H. Hocky

Robert S. Hawkins
COZEN O'CONNOR
1650 Market Street,
Suite 2800
Philadelphia, PA 19103
(215) 665-2015
rhawkins@cozen.com

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

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

Dated: August 17, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by email
(where email addresses have been provided) or first class mail on all parties to this proceeding.

/s/ Eric H. Hocky

Eric M. Hocky

Dated: August 17, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET No. 36472

**CSX CORP. 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**

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

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD
- OPERATION EXEMPTION -
PAN AM SOUTHERN LLC**

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD
OBJECTIONS AND RESPONSES TO
THE ALLIED RAIL UNIONS'
SECOND DISCOVERY REQUESTS**

Robert S. Hawkins
COZEN O'CONNOR
1650 Market Street,
Suite 2800
Philadelphia, PA 19103
(215) 665-2015
rhawkins@cozen.com

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

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

Dated: August 17, 2021

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD
OBJECTIONS AND RESPONSES TO
THE ALLIED RAIL UNIONS'
SECOND DISCOVERY REQUESTS**

Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad ("B&E") hereby responds to the second discovery requests served on it by Allied Rail Unions ("ARU") pursuant to 49 C.F.R. §1114.21 through 1114.31 on August 2, 2021. All of the General Objections previously served on May 28, 2021 in response to ARU's discovery requests, are incorporated and adopted by reference herein.

RESPONSE TO DISCOVERY REQUESTS

Discovery Request No. 9

In response to the first ARU discovery requests to P&S/B&E, P&S/B&E stated:

B&E states that it currently expects to propose agreements containing terms and conditions that are substantially similar to those contained in the existing collective bargaining agreements between the ARU unions and Springfield Terminal; however, the terms of those agreements must be negotiated through the implementing agreement process and therefore cannot precisely be determined at this time. B&E has not yet determined what, if any, changes to the existing terms and conditions of employment it will propose, but looks forward to negotiating mutually acceptable agreements with the ARU unions representing B&E employees.

- (a) What is meant by "substantially similar"?
- (b) How will P&S/B&E propose in *New York Dock* negotiations to deviate from the terms of the agreements between the BMWED, BRS and SMART-MD and ST?

RESPONSE:

B&E repeats the objection that preceded the response quoted above: "B&E objects to this request on the ground that it does not seek discoverable facts but rather seeks information about B&E's future plans and negotiation strategy." Without waiving this objection, given that the STB has not yet ruled on either the B&E Amended Petition, as supplemented, or the CSXT Supplemental Application, B&E states that it is not in a position to set forth any specifics as to what changes it will seek to the current collective bargaining agreements.

As B&E has previously indicated, B&E anticipates that work related to capital improvements and capital maintenance projects will be performed by the owners of PAS, CSXT and NSR, as referenced in the Term Sheet Agreement.

Respectfully submitted,

/s/ Eric H. Hocky

Robert S. Hawkins
COZEN O'CONNOR
1650 Market Street,
Suite 2800
Philadelphia, PA 19103
(215) 665-2015
rhawkins@cozen.com

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

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

Dated: August 17, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by email (where email addresses have been provided) or first class mail on all parties to this proceeding.

/s/ Eric H. Hocky

Eric M. Hocky

Dated: August 17, 2021

JASON GRAHAM DECLARATION EXHIBIT 3



PAN AM RAILWAYS
ENGINEERING DEPARTMENT

8/26/2021

CREW NO. & LOCATION	NO. OF EMPL	EMPLOYEE NAME	<u>PAR EAST</u> JOB TITLE	LICENSE REQUIREMENTS	REMARKS
3241 I&R CREW OLD TOWN, ME	2	MCINTYRE, B.J.	I&R FOREMAN	FRA & NORAC	
		CHAMBERS, J.S.	TRACKMAN		
3342 MAINT. CREW OLD TOWN, ME	3	WING, J.R.	MAINT. FOREMAN	FRA & NORAC	
		ALBERT, N.T.	EO (BKT. LDR.)	CDL B & DOT Medical	
		WESTFIELD, J.L.	CHAUFFEUR (LOG)	CDL B & DOT MEDICAL	
2732 ZONE A SURFACE CREW OLD TOWN, ME PER DIEM IN WORK ZONE	3	PRINCIPATO, R.S.	FOREMAN	FRA & NORAC	
		JACKSON, P.L.	EO (TAMPER/LINER)	MUST BE QUALIFIED ON TAMPER/LINER	
		PERRO, W.P.	EO (REGULATOR)		
3341 I&R CREW WATERVILLE, ME	2	RANDALL, R.J.	I&R FOREMAN	FRA & NORAC	
		HOLT, G.L.	TRACKMAN		
3643 I&R/MAINT. CREW #2 WATERVILLE, ME FML WEST & AUGUSTA	5	GARNER, M.R.	I&R FOREMAN	FRA & NORAC	
		BUSSELL, A.W.	EO (BKT/LDR)	CDL #B, DOT MEDICAL	
		LAWRENCE, A.W.	CHAUFFEUR (FUEL)	CDL B, HAZMAT & DOT MEDICAL	
		HEBERT, J.D.	TRUCK DRIVER	CDL B & DOT Medical	
		MILES, L.A.L.	TRACKMAN		
3644 WELDING CREW WATERVILLE, ME	1	PARKER, R.D.	EI. WELD. FOREMAN	NORAC, WELD CERT., DOT	
3645 I&R CREW- WEST WATERVILLE, ME	2	COONS, G.A.	I&R FOREMAN	FRA & NORAC	REPOSTED
		MILES, B.S.	TRACKMAN		
3545 I&R CREW RILEY'S, ME	3	BISHOP, K.E.	I&R FOREMAN	FRA & NORAC	
		TIBBETTS, N.D.	EO (BKT. LDR.)	CDL #B & DOT Medical	
		BLANCHARD Jr., J.J.	TRACKMAN		
3741 I&R AND MAINT. CREW DANVILLE, ME	3	EMERY, D.M.	I&R FOREMAN	FRA & NORAC	
		WILLIAMS, D.R.	CHAUFFEUR (LOG)	CDL #B & DOT Medical	REPOSTED
		WITHAM, T.B.	TRACKMAN		
3742 MAINT. CREW RIGBY, ME	6	WHITE, C.A.	FOREMAN	FRA & NORAC	VACATED BY BURGESS, ZGR
		KENDRICK, K.A.	EO (BKT. LDR.)	CDL B & DOT MEDICAL	
			CHAUFFEUR (FUEL)	CDL B, HAZMAT & DOT MEDICAL	REPOSTED
		WING, J.D.	CHAUFFEUR (LOG)	CDL B & DOT MEDICAL	
		LAVERDIERE, B.L.	EO		
		CROSBY, H.K.	TRACKMAN		VACATED BY GESSMAN, ZD
3743 I&R CREW RIGBY, ME	2	HUNT Jr., S.R.	I&R FOREMAN	FRA & NORAC	FORCE PROMOTED
		NELSON, M.V.	TRACKMAN		VACATED BY TRACY, SP
3746 WELDING CREW RIGBY, ME	1	BEGIN, C.J.	EI. WELD. FOREMAN	NORAC, WELD CERT., DOT	

CREW NO. & LOCATION	NO. OF EMPL	EMPLOYEE NAME	<u>PAR EAST</u>	LICENSE REQUIREMENTS	REMARKS
			JOB TITLE		
2745 ZONE B CONST. CREW #1 RIGBY, ME PER DIEM IN WORK ZONE	8	BURGESS, Z.G.R.	FOREMAN	FRA & NORAC	
		FANJOY, J.A.	EO (BKT. LDR.)	CDL #B & DOT Medical	
		PARSONS, R.M.	EO		
		NELSON, F.O.	EO		
		WITHAM, R.L.	TRACKMAN		
		GESSMAN, Z.D.	TRACKMAN		
		PETTENGILL, T.J.	TRACKMAN		
		NILES, J.E.	TRACKMAN		
2746 ZONE B CONST. CREW #2 RIGBY, ME PER DIEM IN WORK ZONE	8	LITTLEFIELD, J.B.	FOREMAN	FRA & NORAC	
		WALTMAN, J.E.	CHAUFFEUR (LOG)	CDL #B & DOT Medical	
		TRACY, S.P.	EO		
		PELLETIER, S.R.	EO		
		LEE, A.R.	TRACKMAN		REPOSTED
		NEUBAUER, J.T.	TRACKMAN		
		OLLIVIER, Z.C.	TRACKMAN		
		STEWART, J.J.	TRACKMAN		
2734 ZONE B SURFACE CREW RIGBY, ME PER DIEM IN WORK ZONE	3	STROUT, R.M.W.	FOREMAN	FRA & NORAC	
		HAWKINS Jr., R.D.	EO (TAMPER/LINER)	MUST BE QUALIFIED ON TAMPER/LINER	
		GILLILAND III, R.W.	EO (REGULATOR)		
	52		52	52	

CREW NO. & LOCATION	NO. OF EMPL	EMPLOYEE NAME	<u>PAR CENTRAL</u> JOB TITLE	LICENSE REQUIREMENTS	
2841 CONSTRUCTION CREW DOVER, NH PER DIEM IN WORK ZONE 0700 - 1500	4	RYAN, C.P.	FOREMAN	FRA & NORAC	
		MORELLI, T.T.	EO (BKT. LDR.)	CDL #B, HOIST & DOT	REPOSTED
			EO (TAMPER/LINER)	MUST BE QUALIFIED ON TAMP	VACATED BY MORELLI, TT
		ALLEN, C.S.	EO		
		SILVA, M.S.	TRACKMAN		
		ARCHAMBAULT, K.D.	TRACKMAN		
3941 MAINT. CREW DOVER, NH	2	THOMPSON, W.J.	FOREMAN	NORAC	
		BOUGIE, D.G.	EO (BKT. LDR.)	CDL #B, HOIST & DOT	
			TRACKMAN	DOT MED CARD	REPOSTED
3942 I&R CREW-East DOVER, NH	2	POLIGNI, S.J.	FOREMAN	FRA & NORAC	
		MACPHEE IV, VC	TRACKMAN		
3943 I&R CREW-West DOVER, NH	2	KAPSIMALIS, D.H.	FOREMAN	FRA & NORAC	
		EDWARDS, L.E.	TRACKMAN		
4241 MAINT. CREW LAWRENCE, MA	5	MURPHY, B.	FOREMAN	NORAC	
		MANALS, P.E.	CHAUFFEUR (LOG)	CDL #B, HOIST & DOT	REPOSTED
		CASTELLANO, C.B.	CHAUFFEUR (LOG)	CDL #B, HOIST & DOT	
		JONES, D.G.	FMN. ELEC./WELDER	NORAC	
		JIMENEZ, A.	ELEC./WELDER	WELDING EXP & DOT	
4242 I&R CREW #1- Boston LAWRENCE, MA	1	JONES, D.P.	FOREMAN	FRA & NORAC	
			TRACKMAN		REPOSTED
4244 I&R CREW #2- Mainline LAWRENCE, MA	2	JEFFERS, F.L.	FOREMAN	FRA & NORAC	
		MCHUGH, R.L.	TRACKMAN		
4541 MAINT. CREW #1 NASHUA, NH	3	ROGERS, J.E.	FOREMAN	NORAC	
		SHATTUCK, D.R.	EO (BKT. LDR.)	CDL #B, HOIST & DOT	
		ROPPE, J.T.	TRACKMAN		
4542 I&R CREW NASHUA, NH	2	GARRITY, T.R.	FOREMAN	FRA & NORAC	
		PARR, M.H.	TRACKMAN		

CREW NO. & LOCATION	NO. OF EMPL	<u>PANAM SOUTHERN</u>			REMARKS
		EMPLOYEE NAME	JOB TITLE	LICENSE REQUIREMENTS	
4940 I & R and MAINT CREW AYER, MA	3	WOOLF, L.A.	FOREMAN	FRA & NORAC	REPOSTED
		BLOXSON, J.A.	EO (BKT. LDR.)	CDL #B & HOIST & DOT	
		HEBIB, A.A.	TRACKMAN		
2945 ZONE D CONSTRUCTION CREW AYER, MA PER DIEM IN WORK ZONE	7	GROVER, M.P. (PQ)	FOREMAN	FRA & NORAC	ABOLISHED 9/03
		TOURIGNY, C.A.	EO (BKT. LDR.)	CDL #B, HOIST & DOT	ABOLISHED 9/03
		GORDON, C.E.	EO		ABOLISHED 9/03
		FAVREAU, R.K.	TRACKMAN		ABOLISHED 9/03
		ROSE, A.D.	TRACKMAN		ABOLISHED 9/03
		RICHOTTE, C.J.	TRACKMAN		ABOLISHED 9/03
		ANDERSON, T.A.	TRACKMAN		ABOLISHED 9/03
4941 MAINT. CREW FITCHBURG, MA	2	SCOTT, R.G. (PQ)	FOREMAN	NORAC	REPOSTED
			CHAUFFEUR (LOG)	CDL #B & HOIST & DOT	
			EO (BKT. LDR.)	CDL #B & HOIST & DOT	
		PUCILLO, M.D.	ELEC/WELDER	WELDING CERT & DOT	
4942 I&R CREW FITCHBURG, MA Truck #1612	2	CARNETT, J.L.	FOREMAN	FRA & NORAC	
		KEENAN, S.M.	TRACKMAN		
2944 ZONE D CONSTRUCTION CREW 1 E. DEERFIELD, MA PER DIEM IN WORK ZONE 0600 - 1400	7	BREOR Jr., R.T.	FOREMAN	FRA & NORAC	ABOLISHED 9/03
		HARTSHORN, CC.	ASST. FOREMAN	FRA & NORAC	ABOLISHED 9/03
		JAQUES, M.P.	EO (BKT. LDR.)	CDL #B, HOIST & DOT	ABOLISHED 9/03
			CHAUFFEUR	CDL #B, HOIST & DOT	ABOLISHED 9/03
		MORRIS, W.J.	EO		ABOLISHED 9/03
		SCHNEIDER, S.W.	EO		ABOLISHED 9/03
		DORMAN, G.C.	TRACKMAN		ABOLISHED 9/03
2933 ZONE D SURFACE CREW E. DEERFIELD, MA PER DIEM IN WORK ZONE	3	BRUNELLE, D.L.	FOREMAN	FRA & NORAC	
		BRUNELLE, C.R.	EO (TAMPER/LINER)	MUST BE QUALIFIED ON TAMPER/LINER	
		HARRINGTON, B.E.	EO (REGULATOR)		
5241 MAINTENANCE CREW E. DEERFIELD, MA	4	DION, J.W.	FOREMAN	FRA & NORAC	REPOSTED
		PEDRUCZNY III, LA	EO (BKT. LDR.)	CDL #B & HOIST	
		SCHNEIDER, K.W. (PQ)	ELEC./WELDER	WELDING EXP & DOT	
		MALONEY, E.M.	CHAUFFEUR	CDL "B", DOT, & HOIST	
5242 MAINTENANCE CREW #3 E. DEERFIELD, MA	3	ROUSSEL, W.J.	FOREMAN	FRA & NORAC	
		DENISON, D.M.	TRACKMAN		
		WHITE, A.C.	TRACKMAN		
5445 I&R CREW E. DEERFIELD, MA	2	HOLMES, A.J.	FOREMAN	FRA & NORAC	
		WHITEMAN, R.C.	TRACKMAN		

PANAM SOUTHERN

CREW NO. & LOCATION	NO. OF EMPL	EMPLOYEE NAME	JOB TITLE	LICENSE REQUIREMENTS	REMARKS
5244 I&R CREW So. DEERFIELD, MA	2	AGAPOV, A.N.	FOREMAN	FRA & NORAC	
		KOVRIZHNYKH, Y.A.	TRACKMAN		
5341 MAINT. CREW So. DEERFIELD, MA 0600 - 1400	4	HOWE, A.W.	FOREMAN	FRA & NORAC	
		URGIN, I.A.	ASST. FOREMAN	FRA & NORAC	
		KONDRATYEV, D.V.	CHAUFFEUR (LOG TRK)		
		RICE, C.A.	EO		
			TRACKMAN	DOT MED	REPOSTED
5443 MAINT. CREW PLAINVILLE, CT	2	BRYANT, J.D.	FOREMAN	FRA & NORAC	
			EO (BKT. LDR.)	CDL #B & HOIST & DOT	REPOSTED
		LINCOLN, M.T.	TRACKMAN		
5444 MAINT. CREW NORTH ADAMS, MA	3		FOREMAN	NORAC	VACATED BY DOOLEY, WF
		DOOLEY, H.W.	CHAUFFEUR	CDL #B & HOIST & DOT	
		DOOLEY JR., T.F.	EO (BKT/LDR)	CDL #B & HOIST & DOT	
		JONES, K.J.	TRACKMAN		
5449 I&R CREW NORTH ADAMS, MA	1		FOREMAN	FRA & NORAC	REPOSTED
		MECZYWOR, C.S.	TRACKMAN		
6141 I&R/ MAINT. CREW MECHANICVILLE, NY	4	HARRINGTON, E.N.	FOREMAN	FRA & NORAC	
		MCMAHON, T.G.	ELEC./WELDER	WELDING EXP & DOT	
		RAWLINGS, A.B.W.	EO (BKT. LDR.)	CDL #B & HOIST & DOT	
		WILLIAMS, R.M.	EO	DOT CARD	

49

49

56

CREW NO. & LOCATION	NO. OF EMPL	EMPLOYEE NAME	<u>B & B DEPARTMENT</u>	LICENSE REQUIREMENTS	REMARKS
			JOB TITLE		
3651 B & B WATERVILLE, ME TRUCK# V-6201	1	ROBERGE, S.	ELEC. GANG/LDR.		
			PIPER		VACANT
3652 B & B WATERVILLE, ME (V-1646)	1	MILLER, C.V.	TREAT. PT. OPERATOR		
3653 B & B WATERVILLE, ME TRUCK# V-3545	2	CHADBOURNE, R.K.	FOREMAN MECHANIC	NORAC & DOT MEDICAL CARD	
		TAYLOR, S.D.	MECHANIC		
3751 B & B RIGBY, ME	1	BUCK, J.W.	FOREMAN MECHANIC	NORAC & DOT MEDICAL CARD	
		STROTHER, D.J.	MECHANIC		
4352 B & B N. BILLERICA, MA	4	GULUBICKI, G.J.	FOREMAN MECHANIC	NORAC & DOT MEDICAL CARD	
		CUNNINGHAM, R.I	PIPER	SPRINKLER LICENSE	
		CHARBONNEAU, R.A.	MECHANIC	MASS CONTRACTORS LIC	
		GEROSSIE, JA	MECHANIC	DOT MEDICAL CARD	
4351 B & B N. BILLERICA, MA	1	DASILVA, K.J.	ELECTRICIAN		
			PIPER		VACATED BY CONWAY, DL
5253 B & B E. DEERFIELD, MA	4	HUNTER Jr., R.A.	FOREMAN MECHANIC	NORAC & DOT MEDICAL CARD	
		CANDON, T.M.	ELEC. GANG/LDR.	ELEC. LIC., CDL-B, DOT CARD	
1132 elect 1135 piper		PEDRUCZNY JR., L.A.	PIPER		
		ELGERS, K.P.	MECHANIC		
	14		15		16

CREW NO. & LOCATION	NO. OF EMPL	EMPLOYEE NAME	A & WE DEPARTMENT		LICENSE REQUIREMENTS	REMARKS
			JOB TITLE			
9996 WATERVILLE WORK EQUIPMENT M - F 0700 - 1500	8	BLANCHARD III, MD	WER-09		DOT MED	
		MCCAW, P.D.	WER-01		DOT MED	
		CHAMBERLAND, R.L.	WER-03		DOT MED	
		MCLELLAN, T.J.	WER-10		DOT MED	
		PANTERMOLLER, C.J.	WER-08		DOT MED	
		RICHARDSON , C	WER-05		DOT MED	
		CONNER, D.A.	WER-04		DOT MED	
		YOUNG, M.R.	WER-06		DOT MED	
			WER-11		DOT MED	NEW POSITION
9995 RIGBY WORK EQUIPMENT M - F 0600 - 1400	1	RICHARDSON, D.W.	WER-21		DOT MED	
9998 LAWRENCE WORK EQUIPMENT M - F 0700 - 1500	1	PERRY, J.E.	WER-15		DOT MED	
9994 E. DEERFIELD WORK EQUIPMENT M - F 0700 - 1500	4	WYMAN, S.	WER-28		DOT MED & 1B HL	
		FINCK, M.P.	WER-29		DOT MED & 1B HL	
		WIDEL0, J.M.	WER-23		DOT MED & 1B HL	
		DUPREE, B.G.	WER-26		DOT MED & 1B HL - Surf	
9997 E. DEERFIELD WORK EQUIPMENT TU - SAT 0700 - 1500	1	SHEA, W.J.	WER-27		DOT MED & 1B HL	
9997 S. DEERFIELD WORK EQUIPMENT M - F 0600 - 1400	1	STETSON, J.D.	WER-24		DOT MED & 1B HL	