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Ms. Cynthia T. Brown
Head, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

ENTERED
Office of Proceedings
January 3, 2022
Part of
Public Record

Re: FD 36472, CSX Corporation, Inc. and CSX Transportation, Inc. – Control and Merger – Pan Am Systems, Pan Am Railways, Inc. Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railroad Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company

Dear Ms. Brown:

In accordance with the procedural schedule in the above-referenced proceeding, The Chlorine Institute ("CI") filed Comments herein on August 26, 2021. In those Comments, CI did not take a position, for or against the proposed merger of CSX Transportation, Inc. with the Pan Am Systems, et al., but did urge the Board, if it were to approve the proposed merger, to adopt two conditions. The two conditions proposed by CI were:

- (1) The Board shall hold Applicants to all of their representations in (a) the Revised Application, (b) the testimony submitted on their behalf, (c) the Briefs filed by Applicants herein, and (d) any other submission by Applicants herein, as well as (e) representations made in settlements, agreements, or communications with any entity about the proposed transaction herein, in order to gain that party's support, or to avoid that party's opposition, to the proposed transaction;³ and
- (2) Any anti-competitive effects of the proposed transaction shall be fully ameliorated either at the time of the Board's approval of the proposed transaction, or at any time thereafter in which the Board is presented with evidence that the proposed transaction has caused anti-competitive effects on rail transportation, on any of the Applicants' systems.⁴

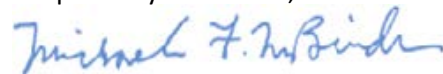
³ In the past, applicants seeking authority from the Board or the Interstate Commerce Commission ("ICC") to acquire, control, and merge with other railroads made numerous, off-the-record representations to, had communications with, or entered into agreements with, various entities with an interest in acquisition/control/merger proceedings before the ICC or the Board,

whether or not such entities were parties of record. *E.g.*, Decision No. 29, FD 35087, *Canadian National Railway Co. and Grand Trunk Corp. – Control – EJ&E West Co.* served June 9, 2011 (agreement reached by Canadian National with Village of Wayne, IL imposed as a condition of the transaction). From time to time, disagreements have developed over such conditions, and the entities to whom the representations were made seek to enforce those representations before the Board. *E.g.*, Decision No. 107, FD 32760, *Union Pacific Corporation, Union Pacific Railroad Co., and Missouri Pacific Railroad Co. – Control and Merger --- Southern Pacific Rail Corporation, Southern Pacific Transportation Co., St. Louis Southwestern Railway Co., SPSCl Corp., and the Denver and Rio Grande Western Railroad Co.* (served Dec. 30, 2014), *aff’d sub nom. G3 Enterprises, Inc. v. STB*, Case No. 15-70597 (9th Cir., Feb. 24, 2017(unpublished)). The Board should clearly provide that such entities, whether or not they were parties of record at the time the proposed transaction in question was considered and approved, will have the ability to seek to have the Board enforce such agreements, communications, or representations.

4 See 49 U.S.C. 11324(d) (the Board must consider anti-competitive effects of a merger or control transaction involving one Class I railroad with one or more other railroads).

CI was pleased to note that the Applicants appear to accept CI’s proposed conditions. Applicants’ October 18, 2021 Response (CSXT/PAR-37-1) at 102.¹ Given Applicants’ apparent acceptance of CI’s proposed conditions, CI has determined that it is not necessary to file a Brief in support of its proposed conditions, or to request time to participate in the hearings, scheduled for January 13, 2022.

Respectfully submitted,



Michael F. McBride
Attorney for The Chlorine Institute

cc: All Parties of Record

¹ Applicants appear to attempt to limit CI’s first proposed condition to representations, commitments, etc. made on the record of this proceeding. The Board should also hold Applicants to any representations, commitments, etc. that a party can prove were made off-the-record and that may have induced that party not to participate herein; such commitments are just as important as on-the-record commitments. Applicants also claim to have resolved any anti-competitive impacts that the proposed merger might otherwise have caused, but CI proposes that the Board require that Applicants ameliorate any anti-competitive effects that the Board determines the proposed merger would cause, not just those Applicants concede the transaction would cause.