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January 14, 2022

VIA E-FILING

Re: STB Finance Docket No. 36472 (Sub-No. 5)
Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad
-Operation of Property of Another Rail Carrier-
Pan Am Southern, LLC and Springfield Terminal Railway Company

Dear Ms. Brown:

In accordance with Decision No. 7, Pittsburg & Shawmut Railroad, LLC doing business as Berkshire & Eastern Railroad ("B&E") is enclosing for filing in the above referenced docket the presentation B&E delivered to the Board at the January 13-14, 2022 public hearing.

If you have any questions related to this filing, please let me know.

Sincerely,

A handwritten signature in blue ink that reads 'Justin J. Marks'.

Justin J. Marks
Counsel to Connecticut Southern Railroad, Inc.

Enclosure

Berkshire & Eastern Railroad

Presentation to the Surface Transportation Board

January 13, 2022



The Amended Petition Satisfies the Exemption Standard

- 1. Berkshire & Eastern Railroad (B&E) is seeking an exemption under 49 USC § 10502 to allow B&E to enter into contracts for the operation of the PAS Lines.**
 - Springfield Terminal (ST) will assign its rights to operate the PAS Lines to B&E.
 - B&E will enter into an operating agreement with PAS covering the operation of the PAS Lines on behalf of PAS.
- 2. Under 49 USC § 10502, the Board is directed to grant an exemption from regulation if (1) regulation is not necessary to carry out the rail transportation policy of Title 49 (RTP), and (2) regulation is not needed to protect shippers from abuse of market power.**
 - The Board should find that the transactions, with the voluntary conditions proposed by the parties, will have no anticompetitive effects, with such finding being dispositive of the RTP issue.
 - Because there will be no anticompetitive effects and no reduction in service, shippers have not requested and do not need Board protections from abuse of market power.
- 3. B&E has agreed to the imposition of *New York Dock* protective conditions to protect the interests of Springfield Terminal employees that work on the PAS Lines who may be adversely affected or displaced by the transactions.**
 - None of the commenting labor unions oppose B&E's transactions to become the contract operator of the PAS Lines.

The Proposed B&E Operation is Pro-Competitive (1 of 3)



- 1.** Under the Amended Petition, B&E will replace Springfield Terminal as the PAS contract operator.
- 2.** PAS will continue to independently provide service to all customers, and connecting carriers, that are currently able to be served by and from PAS lines.
- 3.** B&E will be contractually obligated to operate PAS for the benefit of PAS and its owners.



4. The Amended Petition has broad support:

- Nearly 100 customers are proactively supporting the overall transaction, including one of the two customers served by both PAS and G&W's New England Central Railroad (NECR);
- None have raised any concern regarding B&E's operation of PAS; and
- No connecting railroads or States oppose B&E's operation of PAS.

5. G&W, NS, and CSX have committed through various agreements, including the Vermont Settlement, to ensure that PAS remains independent, and have asked the Board to impose these commitments as conditions to the transactions.

6. B&E's ability to set market-based rates is for limited traffic (i.e., non-haulage traffic) and governed by contractual obligations only to advance the economic interests of PAS.

7. The operating agreement and other PAS agreements specifically prohibit B&E from providing any advantage to any PAS owner, other than their rights under existing agreements, or any G&W affiliate.



- 8. B&E's contract to operate PAS ensures that B&E fulfills its obligations to PAS and aligns its performance as operator with increased PAS success.**
 - If B&E fails in its obligations as the contract operator, PAS's owners can terminate the operating agreement;
 - If PAS operates unprofitably for a period of time, PAS owners can terminate the operating agreement;
 - Alignment between B&E performance and PAS owners is ensured via the meaningful annual operating bonus that B&E will be eligible to earn based on PAS success; and
 - As PAS performance improves, B&E's operating bonus is structured so that the percentage share of PAS profits B&E is entitled to also increases.
- 9. PAS is an important investment for, and key service partner to, its owners who will have significant oversight of B&E through the PAS Joint Operating Committee (JOC), which meets on a regularly scheduled basis.**

Specific Contractual Improvements for PAS stakeholders

	PAS as currently operated by ST	PAS as operated by B&E
Dedicated Employee Base	- ST employees manage both 50% owned PAS and 100% owned PAR - No incentive compensation	- B&E employees dedicated to PAS - B&E management team's incentive compensation based solely on PAS performance
Dedicated Commercial Function and Protections	- ST commercial team handles both PAR and PAS rates and industrial development - No contractual restrictions on rate sharing between PAR and PAS	- B&E commercial team dedicated to PAS - B&E Sales Director reports only to the B&E General Manager - B&E contractually obligated to establish information barriers with affiliated railroads
Independent Oversight of PAS Operator	ST affiliate is an owner of PAS and a member of the JOC - the same body that oversees the role of ST as PAS operator	- Owners and JOC members are independent of B&E as PAS operator - B&E General Manager accountable to the JOC
Alignment of Overhead Costs	Overhead costs allocated between PAR and PAS; incentive for ST to push more overhead to PAS vs. 100% affiliate PAR	B&E charges PAS a fixed overhead fee specific to PAS operations with no linkage to another railroad's performance and no incentive to "push" overhead costs to PAS
Vermont Settlement Agreement	No trackage or operating rights available to VRS over PAS or NECR	Permanent overhead trackage rights for VRS on NECR between Bellows Falls and White River Jct.; service failure-related "pop-up" overhead trackage rights to East Deerfield; service commitments; "Price Stability"

B&E Is Uniquely Positioned to Operate an Independent PAS



G&W and its B&E subsidiary were selected by NS and CSX as they believe we are the best positioned to operate PAS for the long-term.

- 1. The transition of PAS operations is a material undertaking. G&W has more experience acquiring, starting-up and integrating regional and short line railroads than anyone.**
 - G&W and its railroads have acquired or started up more than 100 operations and railroads;
 - G&W's most similar transaction would be the start-up of the 739-mile Rapid City, Pierre & Eastern Railroad (RCPE), whose assets were purchased from Canadian Pacific; and
 - The RCPE start-up was more complex than the PAS start-up is expected to be and included hiring more than 180 employees and procuring 50 locomotives and 2,500 railcars.



2. As the largest owner of short line railroads in New England, G&W is familiar, and has positive relationships, with PAS's stakeholders, all of whom should benefit from B&E operations.
- **Customers.** G&W understands the New England market and customer base. In a 2021 3rd party-conducted customer service survey, the customers of our New England railroads scored G&W railroads an 8.5 out of 10.0 (vs. 6.9 for the rail industry as a whole);
 - **Labor.** All of G&W's New England railroads are unionized and operate with substantially all the same labor unions as ST operates (which is not the case for other New England railroads, many non-unionized);
 - **Government Entities.** G&W's railroads in New England have a long and successful history of working with all the State Departments of Transportation and other rail agencies in the region; and
 - **Passenger Operators.** G&W's railroads in New England host, operate over and work with many of the same passenger and commuter operations as PAS, including Amtrak and Metro-North.

B&E Is Uniquely Positioned to Operate an Independent PAS



3. **G&W is a recognized safety leader in the regional, short line and national rail industry.**
4. **G&W has a demonstrated record of operating expertise and financial strength.**
5. **G&W's railroads have a significant, existing and local presence.** G&W has considerable managerial and physical resources in close proximity to PAS, available to provide additional support as needed.
6. **NS and CSX are confident in G&W's ability to provide the most competitive and independent solution.**

PAS is Important on its own to G&W and its P&W Subsidiary



PAS provides a key competitive service for, and is materially important to, G&W's Providence and Worcester Railroad (P&W) and its customers.

- P&W's customers ship thousands of cars annually over PAS, including through the Hoosac tunnel, and need PAS to remain a strong alternative to CSX's east-west route.
- G&W/P&W and its customers are aligned with PAS's other customers and connecting carriers (CSXT, NS, CP, and VRS) on the need for a viable and competitive PAS.



The Public Will Benefit from B&E as the Operator of PAS

- 1. B&E will be focused only on operating and growing PAS as an independent railroad.**
- 2. B&E's sole responsibility is to operate PAS efficiently, safely and successfully.**
- 3. B&E will participate and benefit fully as a subsidiary of G&W:**
 - a. Best in class safety and customer service culture;
 - b. Significant rail management expertise and resources; and
 - c. Deployment of both company specific and industry standard technology.
- 4. G&W and B&E are fully incentivized and aligned with improving PAS service, increasing PAS rail volumes, lowering costs and growing profitability.**
- 5. G&W is committed to PAS's success and anticipates investing approximately \$20 million directly into B&E in addition to the thousands of hours of management time dedicated to this proceeding and the creation and execution of the transition plan.**
- 6. B&E's contract and G&W's approach to the operations of PAS on behalf of PAS's shareholders is similar to the many rail contracts G&W subsidiaries successfully operate on behalf Class Is, joint facilities, States, public port authorities and customers throughout the United States.**



**Zero
Injuries**

Our Goal Every Day