

Final Comments of The Islington Creek Neighborhood, Portsmouth, NH

*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*

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Dear Members of the Surface Transportation Board,

On January 14, 2022, Mr. Tom Hiney of our neighborhood group spoke at the STB public hearing on our position in this docket. Our comments reflect his remarks and those from our initial comments filed on September 1, 2021. We support this merger and believe it would be in the best economic interest to Portsmouth, NH and other communities. We offer some worthwhile and beneficial suggestions to the merger agreement.

Our Position:

We respectfully request that the Surface Transportation Board (STB) place a paragraph in the merger agreement stating that it strongly urges all disputes/issues from customers and suppliers of CSX and other railways in the merger and municipalities/communities they serve, be resolved through open dialog rather than through legal recourse, whenever possible. Further, should the relationship between these parties become strained during these dialogs, both parties should enlist mediation/negotiation services provided by the Office of Public Assistance, Governmental Affairs and Compliance (OPAGAC) through its Rail Customer and Public Assistance Program (RCPAP) to seek fair and equitable solutions to these matters.

We believe the use of legal means to resolve disputes is usually ineffective because: 1. It discourages many smaller customers, suppliers and communities with legitimate issues from proceeding further since it almost always highlights the federal preemption argument as a means to silencing the disadvantaged party and 2. It may not offer a solution that is satisfactory to both parties. *By utilizing*

RCPA¹ as a go-between, it places customers, suppliers and communities on an equal footing with rail carriers in issue resolutions.

Background:

The Islington Creek neighborhood has long-standing complaints with Pan Am Railways about noise, fumes, safety and other environmental concerns which are mentioned in the comments filed on September 1, 2021 in this proceeding. We are asking for ways to reduce the community impact of noise and diesel fumes – pollution – adjacent to our densely populated residential neighborhood - and in the switching yard adjacent to our neighborhood from long-idling trains. The



idling and train noise go on at all hours of the day and night and last for many hours and sometimes continues for several days at a time. Propane traffic to the Newington Terminal has been increasing since 2019, as has the impact of noise and diesel fumes, with a huge increase noticed over the past eight months. Moreover, the long-term rail car storage is unattractive and greatly impacts the neighborhood. The photo on the left was

taken at the Portsmouth Yard on December 4, 2021.

We have attempted on numerous occasions to have a fair and comprehensive discussion with Pan Am as to their operational practices and the negative impact these practices have on the quality of life of residents living and working in the neighborhoods surrounding the Portsmouth Yard and related tracks. Our recent attempts began in 2019 ² when Pam Am agreed to make some meaningful changes. However, to date, our neighborhood has only seen an increase in the issues and very little, if any, mitigation of the problems.

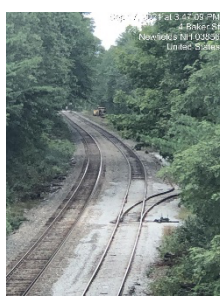
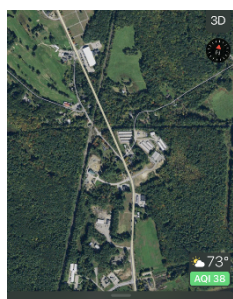
Actions Islington Creek undertook:

Islington Creek reached out for months to the concerned rail company through Portsmouth's City Council, emails and Zoom and phone discussions with senior Pan Am officials (see references in our initial filed comments) offering a number of solutions. We have additionally reached out to our congressional delegation hoping to further the discussion process towards resolution. Pan Am replied by

pointing out federal statutes that preempt any action to mitigate the complaints and a case law decision that reinforces that point.

On this very subject of pre-emption, the Honorable John Barrett III, Massachusetts State Representative, makes the same observations during the public hearing on January 13th. We are not the only community to be brushed aside when dealing with rail transportation companies (e.g., Pan Am).

Islington Creek has sought to provide a viable solution to these environmental issues by suggesting that Pan Am utilize its underutilized Rockingham Junction location as a local switching center. Currently, it is zoned industrial. We sincerely hope that CSX will find this location to be a better investment for upgrades and modernization than the Portsmouth Yard, which is in a heavily residential and



commercial zone. The photo on the left shows a satellite image of Rockingham Junction (center left in image), downloaded from the internet July 2021. It is adjacent to commercial facilities to the east between the Junction and Route 108. Photo on the right is Rockingham Junction looking north from the Route 85 overpass in Newfield, NH on July 20, 2021.

STB and RCPA:

Our journey to find an appropriate venue to address our concerns has been a frustrating one until it led, **only recently**, to the little known RCPA program in STB's OPAGAC on community issues/assistance. We believe that there is a lack of awareness about the benefits that this program can bring to communities like ours. Thus, STB should strongly encourage disagreeing parties to utilize OPAGAC services.

During the public hearing, Chairman Martin Oberman raised the point a number of times about trying to resolve disagreements.

Concluding remarks:

We urge the Board to emphasize the use of open discussion in addressing disputes in the merger agreement. Since there is no requirement for a rail company to do very much other than acknowledge a complaint or inform the municipality/community of an action affecting that locality, STB's endorsement

would serve to reinforce non-litigious, equitable dispute resolutions for our community and others in similar circumstances.

Islington Creek wishes to thank Chairman Oberman and CSX CEO Jim Foote for their reassurances during the public hearings that our concerns would be addressed.

Respectfully submitted,

/S/

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Notes:

1. While customer/community issues are “covered” on STB’s website, there are no federal guidelines on how to address them by STB in a non-legal environment.

2 See Portsmouth Herald article of September 21, 2019:

<https://www.seacoastonline.com/news/20190921/portsmouth-residents-say-idling-trains-health-threat>

I certify that I have this day served copies of this document upon all parties of record in this proceeding, [by method of service consistent with 49 C.F.R. § 1104.12(a)].

/S/

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CC: Parties of Record