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April 22, 2022

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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
April 22, 2022
Part of
Public Record

Re: **Docket No. EP 770**
Urgent Issues in Freight Rail Service

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding are the **Comments of Subsidiaries of Republic Services, Inc. Regarding Freight Rail Service**, dated April 22, 2022, submitted in advance of the Surface Transportation Board's public hearing to be held April 26 and 27, 2022.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

/s/ *Janet H. Gilbert*

Janet H. Gilbert
Attorney for Subsidiaries of
Republic Services, Inc.

JHG:tjl

Attachment

cc: Mr. Aaron D. Hegeman

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. EP 770

URGENT ISSUES IN FREIGHT RAIL SERVICE

**COMMENTS OF SUBSIDIARIES OF REPUBLIC SERVICES, INC.
REGARDING FREIGHT RAIL SERVICE**

VERIFIED STATEMENT OF AARON D. HEGEMAN

I am the Director of Rail Development for Republic Services, Inc. and its numerous rail-served subsidiaries,* which I collectively refer to as “Republic.” In my position, which I have held since April, 2018, I am responsible for corporate oversight, facility development, fleet management, and logistics for Republic’s various waste by rail operations across the United States and into Canada, which involve all 4 major U.S. Class I railroads and several short line and regionals. Prior to joining Republic, I was with BNSF Railway Company for 20 years in various Finance, Strategic Studies, Public Private Partnerships, and Network Strategy positions.

This hearing is very timely and important, and Republic appreciates this opportunity to contribute to the discussion. The current operating situation on the U.S. railroad network has reached a critical level. While many would dismiss these issues as unique, due to unforeseeable combinations of pandemic recovery, a changing workforce, and surging traffic, this situation simply represents a new extreme in the recurring cycles of railroad service failure. We have all been here before, far too many times, and we will all be here again and again until railroads fundamentally change their perspective on their responsibility to maintain reliable and recoverable

* As relevant here, Allied Waste Services of Massachusetts, LLC; Browning-Ferris Industries, Inc.; Devens Recycling Center, LLC; ECDC Environmental, L.C.; and Regional Disposal Company.

operations. While much of the discussion on the regulatory front regarding railroads focuses on economic and rate issues, in our experience the larger problem is that railroads repeatedly put themselves in a position where they are resource and employee poor, and for extended periods of time fail to perform in a manner consistent with their representations of their service. Often it seems they do not view it as their responsibility to ensure a consistent level of service, but place the burden on shippers to compensate for their failures, despite the reality that once a shipper commits to a rail operation they generally must become dependent on it.

Republic is the second largest waste collection, transfer, recycling and disposal enterprise in the United States with approximately \$10 billion in annual revenue and over 35,000 full time employees. The company and its subsidiaries operate facilities in 41 states, providing residential, small-container, and large-container collection services through 356 collection operations, 239 transfer stations, 198 active landfills, and 71 recycling processing centers. The company's services include time-sensitive recycling and solid waste collection and disposal services in the numerous municipalities that depend on Republic to provide safe and efficient outlets for recycled and waste materials. Efficient, timely movement of these materials from collection facility to landfill is critical.

Republic's facilities and operations are subject to numerous federal, state and local requirements that regulate, among other things, the environment, public health, safety, zoning and land use. Permits, licenses and other approvals generally are required for landfills and transfer stations, recycling processing centers, certain solid waste collection vehicles, fuel storage tanks and other equipment and facilities. If the facility does not operate in compliance with those permits and licenses, most particularly in moving product from collection sites to landfill in a timely manner, waste material will accumulate on site. In general, permits, regulations, and industry best

practices require waste transfer stations to clear their floors of waste every 24 hours. Extended build-ups of waste not only result in downstream effects on refuse and waste collection buildup in the streets of the municipalities served by the company's and its customers' collection networks, but risks actual shut down of the facility due to health and safety risks of accumulated waste. In our industry, we do not have the luxury of expecting our customers to compensate for our extended failures to serve them. Our contracts, permits, and regulations require our performance.

The single most critical issue Republic faces with its freight railroad partners is the failure to reliably provide a sufficient number of railcar switch movements – despite representations made regarding switch frequency as an incentive for Republic to locate a facility on a rail line or to convert from truck to rail and despite commitments by Republic to invest in rail infrastructure to support the promised service. For waste businesses, the result of this failure is increased garbage piling up at transfer stations. The end result is more critical -- increased risk of vermin infestation, fire, storm water contamination, and inability to manage mandated permit requirements which, in turn, causes increased threat to public safety, human health, and the environment. To be clear, this is not about occasional missed switches, this is about sudden and extended failures in performance, either by repeated ongoing failure, or by intentional service cutbacks with no recourse.

EXAMPLE: MASSACHUSETTS

Republic's waste facilities serve a major portion of Eastern Massachusetts, particularly the Boston area. Republic handles 350,000 tons of containerized municipal solid waste (MSW) annually from the Boston metropolitan area by intermodal rail service via its origin transload facility located in Ayer, Massachusetts on Pan Am Southern (PAS), owned 50% by Pan Am Railways and 50% by Norfolk Southern Railway Company (NS). Republic also owns and

operates a construction and demolition (C&D) debris recycling facility on PAS in Devens, Massachusetts (near Ayer) that ships approximately 36 gondola carloads of C&D debris weekly or roughly 90,000 tons of C&D waste per year. The site is the nation's largest indoor C&D sorting facility, accepting 400 tons daily and recycling anywhere between 50-70% of that material. Most critically, the facility is one of the few waste transfer sites meeting all of the Commonwealth of Massachusetts's environmental standards.

Per agreement with PAS, Republic is scheduled to receive 5/day week service at its Ayer facility. However, from late December through February of 2022, reliability of service had deteriorated to the point where thousands of tons of municipal solid waste and construction and demolition debris was sitting on the floor in the Boston facilities. The facilities were under constant watch for potential fire hazards as well as for noxious odors and vermin. In addition, the facility was (and still is) closely monitored by the State of Massachusetts for permit violations. The situation was even more dire for the Devens facility. Devens is slated to receive 3 times/week service but the facility was getting barely two times/week service and went several days without any service at all. Several thousand tons of C&D material accumulated on its floors alone. The problem was exacerbated by the fact that there are very few local landfills or other facilities in or around eastern Massachusetts to provide any temporary relief from the need to remove the waste by rail to out of state landfills. In sum, as a result of the service failures, Republic was removing less than ½ of its accumulated MSW and C&D out of its Ayer and Devens facilities and was beginning to see serious upstream effects of debris accumulation. Concern was growing that homes and businesses would be unable to be serviced by trash and debris pick up companies. Meanwhile, over 100 empty rail cars sat on the railroad near the transfer station

The problem in Ayer was, no doubt, affected by the pending CSX Transportation, Inc. (CSX) acquisition of Pan Am, which included the sale of PAS; however, the inability to provide reliable rail service began well before the transaction was announced and, no doubt, PAS's difficulties were, and still are, exacerbated by the labor issues facing all railroads. But the problems do not explain the failure of PAS to communicate and work with its customers to reach solutions to service problems. During the winter of 2021-2022, Republic was in daily communication with PAS; however, despite promises, the service deteriorated to a point where there was no consistency in car supply and planning for contingencies was virtually impossible. Republic had several meetings with Pan Am to discuss service disruptions at Ayer and Devens in addition to daily contacts among the local management of both Republic and Pan Am to no avail. By the end of February of 2022, Republic was forced to seek the assistance of the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC).[†]

Republic discussed with OPAGAC both the immediate concern of MSW and C&D accumulating at the transload sites in Ayers and Devens, as well as the imminent threat of the upstream effects on the streets of Greater Boston. OPAGAC immediately contacted Pan Am to discuss the matter. Pan Am acknowledged it was having serious service failures but had few strategies for alleviating them. OPAGAC did not think further input from its services with PAS would help but suggested Republic discuss the matter with NS and CSX and consider bringing its service concerns directly to the Board in the form of a directed service order or alternate emergency service. The following few days involved conversations with CSX and NS. On March 4, 2022, NS, Pan Am and Republic met to discuss immediate steps to relieve the buildup of material on the floors of the Republic facilities. PAS agreed to increase its switching at the Ayer facility to get the

[†] Republic would like to note that OPAGAC was extremely responsive and we commend their input and role in helping to alleviate the imminent issues the Company faced.

facility cleaned up but was unable to commit to future consistent daily service. Regarding the Devens site, PAS agreed it would provide 12 gondola cars/day until the floor of the facility was cleaned up. No promises were made for future service.

CONCLUSION

From Republic's perspective, the Board's initiation of this proceeding is timely and necessary. The example from Massachusetts is only one of many, and significant rail service challenges are currently a difficult reality across Republic's network of rail-served facilities. Those problems warrant – and indeed demand – timely, thoughtful and decisive responses by this agency and the railroad industry.

VERIFICATION

I, Aaron D. Hegeman, verify under penalty of perjury that the foregoing is true and correct. I further certify that I am qualified and authorized to make and submit the foregoing Comments to the Surface Transportation Board on behalf of Allied Waste Services of Massachusetts, LLC; Browning-Ferris Industries, Inc.; Devens Recycling Center, LLC; ECDC Environmental, L.C.; and Regional Disposal Company.

Executed this 22nd day of April, 2022.



Aaron D. Hegeman