

BEFORE THE
SURFACE TRANSPORTATION BOARD

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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

OVERSIGHT

PROGRESS REPORT ON B&E TRANSACTION

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Dated: August 12, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
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OVERSIGHT

PROGRESS REPORT ON B&E TRANSACTION

In *Decision No. 9* in this proceeding, served on April 14, 2022, the Board¹ approved the application by CSX to acquire control of seven rail carriers owned by Pan Am Systems, Inc. (“Systems”), and Pan Am Railways, Inc., and to merge six of those PAR Railroads into CSXT (the “Merger Transaction”). The Board also approved a number of related transactions, one of which allowed Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad (“B&E”) to replace Springfield Terminal as the operator of Pan Am Southern LLC (“PAS”), a 50/50 joint venture between Boston & Maine (a PAR Railroad now wholly-owned and controlled by CSX) and NSR (the “B&E transaction”).

In *Decision No. 9*, the Board ordered that, “[w]ithin 90 days after the effective date of this decision, CSX shall provide a progress report on whether the B&E transaction has been

¹ The acronyms and defined terms used in this Progress Report are the same as those used in *Decision No. 9* in this proceeding, served by the Board on April 14, 2022, or in the Revised Application filed in this proceeding on July 1, 2021.

completed. If the B&E transaction has not been completed, CSX should explain why and subsequently notify the Board when the transaction has been completed.” *Decision No. 9*, slip op. at 53. The decision became effective on May 14, 2022. As CSX previously reported to the Board, on June 1, 2022, CSX acquired Systems and CSX now owns and controls Springfield Terminal, Boston & Maine, and the other PAR Railroads. *See CSXT/PAR-56*, filed June 1, 2022. While CSX now controls those PAR Railroads, they have not yet been merged into CSXT. Pursuant to *Decision No. 9*, CSX submits this progress report on the B&E transaction.

As the Board noted in *Decision No. 9*, CSX explained at the hearing that completion of the B&E transaction would likely take some time to complete after CSX acquired control of the PAR Railroads, because of the time required for the mandatory negotiating process with Springfield Terminal’s labor unions set forth in the *New York Dock* conditions. *Decision No. 9*, slip op. at 40. CSX, Springfield Terminal, NSR, and B&E have worked diligently since the B&E transaction was approved to complete the transaction and transition the operations of PAS from Springfield Terminal to B&E. Notwithstanding the diligence of the railroads and the labor unions, implementing agreements are still under negotiation and B&E has not yet replaced Springfield Terminal as PAS operator.

As described in further detail below, Springfield Terminal (wholly owned and controlled by CSX since June 1) and B&E formally started the *New York Dock* negotiating process promptly after the Board’s approval of the transaction became effective, and since June 1 they have conducted negotiations with all labor unions. Those negotiations have not yet produced definitive implementing agreements, although progress has been made. B&E and Springfield Terminal would prefer to reach agreements through negotiation. If agreements cannot be reached through this negotiation process, Springfield Terminal and B&E are prepared to invoke

arbitration under the *New York Dock* conditions and subject to the *New York Dock* procedural framework. In the meantime, and as described further below, CSX, Springfield Terminal, NSR, and B&E have held regular meetings to prepare for the transition of PAS operations from Springfield Terminal to B&E. The parties are confident that the B&E transaction will be completed very soon after the *New York Dock* process has ended and the labor implementing agreements are in place.

The status of efforts by CSX, NSR, Springfield Terminal, and B&E to effectuate the transition of PAS operations to B&E is discussed further below.

I. Labor Agreements

Springfield Terminal (as wholly owned and controlled by CSX) currently operates the PAR System pursuant to leases over lines owned and leased by the other PAR Railroads, and will continue to do so until Springfield Terminal is merged into CSXT, at which time CSXT will become the operator. Springfield Terminal also currently operates PAS as PAS's agent. The same Springfield Terminal labor agreements cover employees currently working on the PAR System and PAS. *See* B&E Supplement to Amended Petition for Exemption 4, FD 36472 (Sub-No. 5), filed July 1, 2021. In connection with B&E taking over operations of PAS, the Springfield Terminal workforce will be divided, and B&E expects to hire its workforce from Springfield Terminal employees to operate PAS. *Id.* at 3.

Article I, Section 4 of the *New York Dock* conditions requires that, before Springfield Terminal and B&E can make changes in operations that impact employees (including changes that will result from the completion of the B&E transaction), the carriers must reach implementing agreements with unions that represent Springfield Terminal employees. Springfield Terminal has twelve unions, which represent fourteen crafts of employees. B&E will have ten crafts of employees. Springfield Terminal and B&E (referred to collectively in this

section as the “carriers”) must reach pre-consummation implementing agreements with these unions before the B&E transaction can be completed.

To start the process, Section 4(a) of the *New York Dock* conditions requires that the carriers “give at least ninety (90) days written notice of such intended transaction . . . to the interested employees . . . [and] the representatives of such interested employees.” *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60, 85 (1979). Section 4 then specifies a timetable for negotiations to reach voluntary implementing agreements and for arbitration if after 30 days of negotiations voluntary agreements have not been reached. While Section 4 is intended as an expedited process for reaching implementing agreements, in practice, it usually takes months to reach an implementing agreement either through negotiation or arbitration.

The *New York Dock* conditions became effective for the B&E transaction when *Decision No. 9* took effect on May 14, 2022. Two days later, on May 16, 2022, the carriers served a Section 4 notice on each of Springfield Terminal’s unions and requested that an initial conference promptly be scheduled with each union. The matrix attached here as Exhibit No. 1 shows the date of the initial conference that the carriers had with each union.

The carriers have proposed a master *New York Dock* implementing agreement between Springfield Terminal, B&E, and the union for each craft.² This agreement provides for the division of the current Springfield Terminal workforce between Springfield Terminal (operating

² A similar implementing agreement structure was used successfully by the carriers and unions in the Conrail transaction approved by the Board in Finance Docket No. 33388, *CSX Corp.—Control & Operating Leases/Agreements— Conrail Inc.*, Decision No. 89, 3 S.T.B. 196 (1998). In that transaction, the lines, facilities, and employees of Conrail were divided between CSXT, Norfolk Southern Railway (“NSR”), and Conrail. For each craft, CSXT, NSR and Conrail entered a master *New York Dock* implementing agreement, which among other things divided the Conrail workforce between the three carriers. Each carrier entered separate *New York Dock* implementing agreements with the union, which became part of the master agreement, and made changes to that carrier’s collective bargaining agreement to implement the transaction.

the PAR System) and B&E (operating PAS) in areas where B&E will also have that craft of employee, to allow each carrier to have a sufficient workforce to meet its needs of service. The master agreement proposed by the carriers also applies the *New York Dock* protective conditions and establishes a process for employees to apply for labor protective benefits.

The carriers are proposing two attachments to each master agreement. Attachment 1 is an agreement between Springfield Terminal and the union that amends the existing Springfield Terminal agreement with that union as necessary to allow the B&E transaction to go forward, reflecting the fact that Springfield Terminal will only operate the PAR System. Attachment 2 is a separate agreement between each union and B&E covering B&E employees. B&E has proposed each union's current Springfield Terminal collective bargaining agreement with modifications to adapt that agreement to B&E's operation of PAS.

Since service of the Section 4 notices, the carriers have met with all of Springfield Terminal's unions multiple times. The carriers have presented to each union a proposal for the master agreement and for Attachments 1 and 2. Exhibit 1 shows the dates that the carriers served their proposed master *New York Dock* agreement and their respective Attachment 1 and 2 proposals on the unions. Some of the unions have presented counterproposals. As Exhibit 1 shows, the carriers and the unions have engaged in extensive negotiations, notwithstanding the time demands placed on several unions from their national conventions in the spring and summer and the on-going national collective bargaining between the major freight railroads and many of the rail unions.³

³ The National Mediation Board ("NMB") conducted intensive mediation sessions this Spring and Summer. And national bargaining recently entered an especially intensive period since the President appointed Presidential Emergency Board No. 250 ("PEB") effective July 18, 2022. Under the Railway Labor Act, the appointment of the PEB creates a 30-day cooling off period during which time the PEB holds hearings and issues a report with recommendations for resolving bargaining impasses. The issuance of the report creates another 30-day cooling off

As Exhibit 1 shows, there are many moving parts in trying to reach the required *New York Dock* implementing agreements, including changes to the Springfield Terminal labor agreements and new collective bargaining agreements for B&E with multiple unions. Moreover, the division of Springfield Terminal's workforce is a unique aspect of the B&E transaction that requires consideration of a number of factors that are of strong interest to Springfield Terminal workers and union members. While the carriers have engaged in diligent negotiations, the parties face the difficult challenge of devising a fair and equitable process for dividing the current Springfield Terminal workforce between B&E and Springfield Terminal and adapting the current labor agreements to reflect future operations. This challenge is made more difficult by the current labor market. Finally, the unions generally require membership ratification of agreements reached through voluntary negotiation, which could further extend the time by which such agreements could become effective.

Under Section 4(a) of the *New York Dock* conditions, the carriers can request arbitration to establish required agreements any time after 30 days from the first meeting. Since CSX/Springfield Terminal would prefer to reach voluntary agreements with the unions, arbitration has not yet been requested even though it has been more than 30 days since the carriers had their first negotiation session with each of the unions. The most recent negotiation session with the Brotherhood of Maintenance of Way Employees Division-IBT ("BMWED") occurred on August 4, 2022. During that session, the BMWED suggested that the parties were at an impasse on reaching a negotiated *New York Dock* implementing agreement. While the carriers

period during which the parties attempt to reach voluntary agreements based on the PEB's recommendations. These PEB-related activities may affect the availability of union officials involved in negotiation of implementing agreements over the coming weeks and months.

remain open to further negotiations with BMWED to reach the required *New York Dock* implementing agreement, the parties appear close to invoking arbitration.

Negotiations with other unions are generally proceeding in a positive manner and, therefore, the carriers have not yet invoked arbitration with any other union. However, if the carriers have not reached a voluntary *New York Dock* implementing agreement with a union in the next 30 to 45 days, or if it appears earlier that negotiations are at an impasse, the carriers intend to invoke arbitration under Section 4 for that union.

The carriers continue to schedule negotiation sessions with the unions. It is difficult to predict when all agreements necessary before B&E can take over operations from Springfield Terminal will be reached through negotiation or arbitration. To date, the carriers have reached a tentative implementing agreement with one union, the International Brotherhood of Boilermakers. The carriers hope that other agreements can be reached shortly, and if not, that the arbitration process will promptly produce the necessary implementing agreements that will permit a turn-over of PAS operations to B&E.

II. Transition Planning

While the *New York Dock* process described above has moved forward, CSX, Springfield Terminal, NSR, and B&E have engaged in extensive transition planning so that the B&E transaction can be completed very soon after the labor implementing agreements have been reached. CSX, Springfield Terminal and B&E hold weekly meetings to discuss the transition of PAS operations from Springfield Terminal to B&E. The carriers have discussed next year's capital plan, including the procurement of assets such as rail and ties. Accountants for both Springfield Terminal and B&E recently met at Springfield Terminal's headquarters in North Billerica, Mass. to discuss transition of PAS accounting to B&E. A number of operational issues have been studied and discussed, including dispatching, customer service, trip calling for

employees, and other details. The respective technology departments for CSX/Springfield Terminal and B&E have started addressing transitional issues to ensure a smooth and integrated transition. The carriers have also inventoried and considered the disposition of equipment, supplies, and other assets currently owned and used by Springfield Terminal to operate PAS.

This productive and efficient transition process is consistent with the experience and success of B&E's parent company, Genesee & Wyoming Inc., at acquiring short lines and starting up operations. Therefore, CSX is confident that the transition of PAS operations from Springfield Terminal to B&E will proceed very soon after *New York Dock* implementing agreements are reached.

Respectfully submitted,

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Dated: August 12, 2022

EXHIBIT 1**Implementing Agreement Meeting Schedule**

<u>Organization</u>	<u>Section 4 Notice Served</u>	<u>Draft Implementing Agreement Served</u>	<u>Attachment 1 Sent</u>	<u>Attachment 2 Sent</u>	<u>Meeting Dates</u>	<u>Status</u>
BRCB	5/16/2022	6/2/2022	6/23/2022	6/24/22 (BRCB)	6/2 and 6/24	In Progress
TCIU	5/16/2022	6/2/2022	6/23/2022	6/28/2022	6/2 and 6/24	In Progress
BRS	5/16/2022	6/1/2022	6/23/2022	6/28/2022	6/1, 6/9, 6/29 and 7/14	In Progress
IBEW	5/16/2022	6/16/2022	6/23/2022	6/16/2022	6/16, 6/29 and 7/22	In Progress
BMW	5/16/2022	6/1/2022	6/23/2022	6/28/2022	6/1, 6/29, 7/22 and 8/4	At Impasse
BLET	5/16/2022	6/1/2022	6/27/2022	6/15/2022	6/1, 6/15, 6/30, 7/21, and 8/8	In Progress
SMART-TD (Trainmen)	5/16/2022	6/16/2022	6/27/2022	6/16/2022	6/16, 6/30, and 7/22	In Progress
SMART-TD (Laborers)	5/16/2022	6/16/2022	6/27/2022	N/A	6/16, 6/30, and 7/22	In Progress
SMART-TD (Patrolmen)	5/16/2022	6/16/2022	6/27/2022	N/A	6/16, 6/30, and 7/22	In Progress
IAM	5/16/2022	6/1/2022	6/23/2022	6/15/2022	6/2, 6/15 and 8/10	In Progress
ATDA	5/16/2022	6/1/2022	6/23/2022	6/15/2022	6/1 and 6/15	In Progress
IFPTE	5/16/2022	6/15/2022	6/23/2022	6/15/2022	6/15 and 8/3	In Progress
IBB&B	5/16/2022	6/2/2022	6/27/2022	N/A	6/2	Tentative Agreement
SMART Mech	5/16/2022	6/16/2022	6/27/2022	N/A	6/16	In Progress

CERTIFICATE OF SERVICE

I hereby certify that I have caused this Progress Report on B&E Transaction in Docket No. FD-36472, *CSX Corporation and CSX Transportation, Inc.—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*, to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sally Mordi

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August 12, 2022