

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36472 (and embraced sub-dockets)

ENTERED
Office of Proceedings
January 21, 2022
Part of
Public Record

CSX CORP. AND CSX TRANSPORTATION, INC. ET AL
- CONTROL AND MERGER-
PAN AM SYSTEMS, INC., MAINE CENTRAL RAILROAD COMPANY,
NORTHERN RAILROAD, PAN AM SOUTHERN, LLC, PORTLAND TERMINAL
COMPANY, SPRINGFIELD TERMINAL RAILWAY COMPANY, STONEY BROOK
RAILROAD COMPANY, AND VERMONT & MASSACHUSETTS RAILROAD COMPANY

**SUPPLEMENTAL COMMENTS ON APPLICATION AND
RELATED PETITION TO OPERATE AND REQUEST FOR CONDITION**

During the public hearings concerning the above-captioned matters, the Chairman stated that the Board would accept supplemental comments from parties who believe that it was necessary or appropriate to respond to statements made, information provided, or representations or commitments made at hearings; the Chairman said that parties should not use supplemental comments to reiterate points that were previously made, but, rather, to respond to new facts, arguments, statements or commitments made in the hearings. Based on that guidance, the Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical Division; and National Conference of Firemen and Oilers, 32BJ/SEIU ("Allied Rail Unions" or "ARU")¹ submit these Supplemental Comments to respond to specific statements and representations made by CSXT CEO James Foote during the hearings. Based on his statements

¹ There is no formal organization known as the "Allied Rail Unions", rather that name has been adopted by these organizations for convenient collective reference in this proceeding; each organization is a separate participant in this proceeding

and commitments, the ARU request a condition on approval of the transactions regarding continued employment for current Pan Am/Springfield Terminal employees who work on the Pan Am Southern lines, and the performance of “capital work” on those lines.

During the hearings, Mr. Foote was questioned about CSXT’s statements that current Pan Am/Springfield Terminal employees would continue to have jobs after consummation of the transactions. This issue was raised at the start of the hearing on January 13 in connection with the Pittsburgh and Shawmut/Berkshire & Eastern/G&W filings, and the Labor Impact Statement in the Application, which indicated that B&E anticipated having 159 employees working on the Pan Am Southern lines, whereas Pan Am/ST employs 214 workers on the PAS lines. Mr. Foote responded that the principal reason why P&S/B&E expected to have fewer employees was that B&E would not be doing “capital work”.² Mr. Foote’s remark echoed statements in the Application that B&E would be doing only inspection, maintenance and repair work, not production/construction/capital work which might be performed by CSXT, NSR or contractors. Amended Application Operating Plan Ex.13 at 51 (APP 349), *see also* Term Sheet Agreement at 2 (APP 454)- stating that-“With respect to annual capital maintenance work, PAS will develop an annual budget and CSXT or NSR will have first priority to perform that work, with OpCo [the GWI subsidiary, now presumably P&S/B&E] or a PAS-approved contractor having responsibility thereafter subject to the terms of any applicable OpCo labor agreements”. (emphasis added).

But in the hearing, Mr. Foote went further than CSXT and P&S/B&E did in their Application and Petition, and further than the Term Sheet did. After stating that the principal

² The Labor Impact Statement indicates a reduction in maintenance of way positions from 56 to 27, and a reduction in Signal positions from 11 to 7.

reason for the reduction in number of employees working for B&E on the PAS was that B&E would not be doing capital work, Mr. Foote stated that-- we will be doing the work, we will hire those people. The Chairman then followed-up, asking whether those employees [the ones not hired by B&E] can continue to work. Mr. Foote responded that if someone is working today, they can work tomorrow. The Chairman asked if that included the people who B&E finds unnecessary for its needs. Mr. Foote responded- yes.³

Mr. Foote's testimony also went beyond CSXT's answers to ARU discovery requests concerning staffing for B&E's operation of the PAS. The ARU sought clarification and additional information about whether and under what circumstances CSXT or NSR would perform capital work on the PAS lines, and whether or when contractors would be used. A similar question was posed to P&S/B&E. The CSXT and P&S/B&E responses to those discovery requests asserted that the discovery requests were improper because they sought information about the intentions of other parties, and about "future plans", and referred ARU to the Application and supporting documents. *See* CSXT and B&E/P&S responses to ARU discovery request #4 to CSXT and discovery request #4 and #6 to B&E/P&S (attached hereto).⁴

In contrast to the discovery responses that provided no additional information or clarification about whether and under what circumstances capital work on the PAS lines would be performed by CSXT, NSR, or contractors, Mr. Foote stated that we [presumably CSXT, or perhaps CSXT and NSR] would be doing the work and would hire the Pan Am/ST workers who now perform the work, that anyone working on the lines today can work on them tomorrow,

³ The transcript of the hearing is not yet available, so this filing is based on counsel's notes and therefore does not contain actual quotations.

⁴ P&S/B&E's response to discovery request #4 did indicate that it anticipates that such work would be performed by CSXT or NSR, but CSXT made no such commitment prior to the hearings.

including workers who B&E/P&S deem unnecessary.

Because these statements constitute new information and new commitments made at the hearing, the ARU submit that it is therefore appropriate for the ARU to file these Supplemental Comments to address those statements and commitments.

The ARU also note that, at the hearings, CSXT agreed that if the Board approves the Application and Petition, its approval would include all commitments made by CSXT, including commitments made at the hearings. At the end of CSXT's presentation, the Chairman asked counsel for CSXT whether CSXT's commitments, including answers to questions posed during the hearings are part of the transaction, the package of the Application, and conditions accepted by the Applicants; and counsel for CSXT responded-yes. That any promise made by CSXT during the hearings is properly a condition of an approval of the transactions was reiterated toward the close of the hearings on January 14.

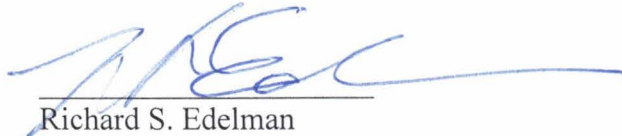
Given CSXT's agreement that commitments made during the hearing were properly deemed part of the transactions and the Application, and properly made conditions of approval of the transactions, the ARU respectfully request that if the Board approves the transactions, it should condition such approval on the commitments made by Mr. Foote regarding continued employment of Pan Am/ST employees who currently work on the PAS lines who are not hired by P&S/B&E, particularly Maintenance of Way workers and Signalmen who are not hired by P&S/B&E because B&E will not be performing capital work, and regarding the performance of capital work on the PAS lines, and. Specifically, the ARU request that Board approval of the transactions be conditioned as follows:

Any Pan Am/ST employee working on the PAS lines who is not offered a position with P&S/B&E will be offered a position in his/her craft with CSXT or NSR. Any issues or

disputes concerning this condition will be resolved as part of the *New York Dock* implementing agreement negotiations/arbitration processes.

Capital work on the PAS lines will be performed by CSXT or NSR in accordance with their collective bargaining agreements with BMWED and BRS.

Respectfully submitted,



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January 21, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served copies of the foregoing Allied Rail Unions' Supplemental Comments by First Class Mail to the offices all Parties of Record in this Finance Docket.

Date: January 21, 2022



Richard S. Edelman

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 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

**RESPONSES AND OBJECTIONS OF CSX CORPORATION AND
CSX TRANSPORTATION, INC. TO THE ALLIED RAIL UNIONS'
FIRST DISCOVERY REQUESTS TO CSX TRANSPORTATION**

CSX Corporation ("CSXC") and CSX Transportation, Inc. ("CSXT") (CSXC and CSXT are collectively referred to as "CSX") respond as follows to the Allied Rail Unions' ("ARU") First Discovery Requests to CSXT:

GENERAL RESPONSES

The following General Responses apply to each of ARU's discovery requests:

1. Where CSX states that it will produce documents, CSX will conduct a reasonable search for responsive, non-privileged documents, subject to any other qualifications specified in its response and the terms of the Protective Order in this proceeding.
2. Production of documents does not necessarily imply that they are relevant to or admissible in this proceeding and is not to be construed as waiving any of the general or specific objections stated below.

GENERAL OBJECTIONS

CSX objects to ARU's discovery requests on the following grounds:

1. **Privilege.** CSX objects to ARU's discovery requests to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege or protection. Any production of privileged or otherwise protected documents is inadvertent and shall not constitute a waiver of any claims of privilege or other protection.

agreements with those organizations. CSXT is party to a Consolidated Agreement and five property agreements with BRS: the Baltimore & Ohio, Seaboard Coast Line, Louisville & Nashville, Chesapeake and Ohio-Central District, and CSXT Northern Agreements.

CSX does not know which collective bargaining agreements it would propose to be applied to Springfield Terminal employees at some future time when CSXT merges Springfield Terminal and other PAR Railroads into CSXT or when CSXT coordinates operations on the PAR System with those of CSXT in a manner that Springfield Terminal employees became CSXT employees. CSX cannot at this time say whether it would propose that CSXT or Springfield Terminal property agreements apply on former PAR System territory in the event of a future *New York Dock* coordination. Ultimately, the applicable agreements will be determined by negotiation and/or arbitration with the involved unions pursuant to the *New York Dock* conditions imposed by the Board upon the approved Transaction.

ARU Discovery Request No. 2: *“Which agreements between CSXT and BMWED, BRS, SMART-MD and NCFO will CSXT propose to apply to CSXT employees working on the former PAR territory?”*

CSX Response: CSX objects to this request on the ground that it does not seek discoverable facts but rather seeks information about CSX’s future plans. Without waiving this objection or the General Responses and General Objections set forth above, CSX states that, as explained in the response to Discovery Request No. 1, CSX cannot say at this time which agreements it would propose to be applied to Springfield Terminal employees who become CSXT employees at some future date by virtue of a *New York Dock* coordination between CSXT and Springfield Terminal. Again, the applicable agreements will be determined by negotiation and/or arbitration with the involved unions pursuant to the *New York Dock* conditions imposed by the Board upon the approved Transaction.

ARU Discovery Request No. 3: *“The Term Sheet Agreement included in the Application states that, ‘OpCo [the GWI subsidiary, now presumably P&S/B&E] will perform the maintenance, inspection and repair activities as provided in the current operating agreement’.”*

(a) Please provide the current operating agreement.

(b) Please provide any document that describes, sets the parameters for, or is a basis for, a planned operating agreement or other document with respect to maintenance, inspection and repair activities on the post-Transaction PAS lines.”

CSX Response: CSX objects to this request on the ground that the reference to “other document with respect to maintenance, inspection and repair activities” is vague and overbroad. Without waiving this objection or the General Responses and General Objections set forth above, (a) CSX directs ARU to the Railroad Operating Agreement attached as Exhibit 2C to the Application filed in STB Finance Docket No. 35147 on May 30, 2008, and (b) CSX directs ARU to the Term Sheet Agreement included in the Amended Application filed in this proceeding on April 26, 2021.

ARU Discovery Request No. 4: *“The Term Sheet Agreement included in the Application states that ‘With respect to annual capital maintenance work, PAS lines, will develop an annual*

budget and CSXT or NSR will have first priority to perform that work, with OpCo [the GWI subsidiary, now presumably P&S/B&E] or a PAS-approved contractor having responsibility thereafter subject to the terms of any applicable OpCo labor agreements.

- (a) Please provide any document that describes, sets the parameters for, or is a basis for development of a budget for or plans for annual capital work on the post-Transaction PAS lines.*
- (b) Please describe any current understanding between CSXT and NSR regarding budgets or plans for capital work on the post-Transaction PAS lines and right of way and signal system and grade crossings.*
- (c) How will CSXT and NSR decide whether either of them, and/or which of them, will perform capital work on the post-Transaction PAS lines and right of way and signal system and grade crossings.*
- (d) Will CSXT, NSR or PAS assert that collective bargaining agreements between BMWED and BRS and OpCo[B&E] do not restrict the ability of PAS, CSXT, or NSR to assign contractors to perform capital maintenance work on the post-Transaction PAS lines and right of way and signal system and grade crossings. ”*

CSX Response: CSX objects to Request No. 4 (b) on the ground that the reference to “any current understanding between CSXT and NSR regarding budgets or plans for capital work” is vague. CSX further objects to Request No. 4(b) on the ground that it seeks information about NSR’s understanding that is not within CSX’s possession, custody or control. CSX further objects to Request Nos. 4(c) and 4(d) on the ground that these requests seek information about the intentions and expectations of persons other than CSX that is not within CSX’s possession, custody or control. CSX further objects to Request No. 4(d) on the ground that it does not seek discoverable facts but rather seeks information about CSX’s future plans. Subject to these objections and without waiving the General Responses and General Objections set forth above, CSX states:

- (a) CSX directs ARU to the NSR Settlement Agreement and the GWI Term Sheet Agreement, each submitted with the Amended Application in this proceeding.
- (b) CSX directs ARU to the NSR Settlement Agreement submitted with the Amended Application in this proceeding and the PAS governing agreements included with the Application filed in STB Finance Docket No. 35147 on May 30, 2008.
- (c) CSX directs ARU to the NSR Settlement Agreement submitted with the Amended Application in this proceeding and the PAS governing agreements included with the Application filed in STB Finance Docket No. 35147 on May 30, 2008.
- (d) CSX can only respond to this request for itself. CSX is not aware of any collective bargaining agreements between OpCo[B&E] and BMWED and BRS. Therefore, CSX has no view on whether collective bargaining agreements that BMWED and BRS may reach with OpCo[B&E] might restrict the ability to assign contractors to perform capital maintenance work on post-Transaction PAS lines and right of way and signal system and grade crossings. In

addition, the extent to which future OpCo[B&E] agreements restrict contracting out may be affected by future implementing agreements reached with these unions under the *New York Dock* conditions imposed on the Transaction.

ARU Discovery Request No. 5: *“The Labor Impact statement provided with the Application states that no current PAR positions will be eliminated by CSXT. But it does not state how many positions there will be for each craft. Please specify the number of positions CSXT anticipates for PAR for the following crafts: maintenance of way, signal, sheet metal worker, shop laborer.”*

CSX Response: Without waiving the General Responses and General Objections set forth above, CSX states that, as of the date of this response, CSX estimates there will be the following number of positions on Springfield Terminal, which will work on the PAR System:

Maintenance of Way	106
Signal	23
Sheet Metal Worker	5
Laborer	1

ARU Discovery Request No. 6: *“Please provide copies of all documents referred to in answering these discovery requests.”*

CSX Response: Without waiving the General Responses and General Objections set forth above, CSX directs ARU to the documents referenced herein.

Respectfully submitted,

/s/ Anthony J. LaRocca

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Dated: May 28, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36472 (Sub-No. 5)

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD
– OPERATION OF PROPERTY OF RAIL CARRIER PAN AM SOUTHERN LLC –
PAN AM SOUTHERN LLC AND
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a
BERKSHIRE & EASTERN RAILROAD
OBJECTIONS AND RESPONSES TO
THE ALLIED RAIL UNIONS’
FIRST DISCOVERY REQUESTS**

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Dated: May 28, 2021

Discovery Request No. 3

The Petition in Sub-docket No.5 states that GWI/P&S/B&E intends to “enter into agreements providing substantially similar terms and conditions to those contained in existing agreements”.

- a. By “existing agreements”, is GWI/P&S/B&E referring to agreements between BMWED, BRS, and SMART-MD and ST?
- b. What is meant by “substantially similar”? How does GWI/P&S/B&E seek to deviate from the terms of the agreements between the BMWED, BRS and SMART-MD and ST?

RESPONSE:

See response to Discovery Request No. 1.

Discovery Request No. 4

The Application assumes that traffic on the post-Transaction PAS will be the same as or greater than traffic on the current PAS (Application at 19; Operating Plan at 25-29; Petition at 4,11-12); the GWI/P&S/B&E Labor Impact Statement projects a B&E workforce with a maintenance of way work force that is 48% of the current PAS maintenance of way work force, and a signal work force that is only 63% of the current PAS signal workforce.

- a. How does GWI/P&S/B&E plan to inspect and maintain the PAS lines and right of way and to operate PAS, with the same or greater level of traffic with only 48% of the current PAS maintenance of way work force.
- b. How does GWI/P&S/B&E plan to test, inspect, and maintain the PAS signal system and grade crossings, and to operate PAS, with the same or greater level of traffic with only 63% of the current PAS signal workforce?

RESPONSE:

B&E objects to this request on the grounds that it does not seek discoverable facts but rather seeks information about B&E’s future plans. Without waiving this objection or the General Objections set forth above, B&E states that it anticipates that work related to capital improvements and capital maintenance projects will be performed by maintenance of way gangs supplied by CSXT or NSR, as referenced in the Term Sheet Agreement. As a result, B&E will require fewer maintenance of way employees than ST currently utilizes on PAS.

For the PAS signal systems and grade crossings, B&E crews will perform normal

operating maintenance of the signal systems and grade crossings, but work related to capital improvements and capital maintenance projects will be performed by maintenance of way gangs supplied by CSXT or NSR, as referenced in the Term Sheet Agreement. As a result, B&E will require a smaller signal workforce that ST currently utilizes on PAS.

Discovery Request No. 5

The Term Sheet Agreement included in the Application states that, “OpCo [the GWI subsidiary, now presumably P&S/B&E] will perform the maintenance, inspection and repair activities as provided in the current operating agreement”.

- a. Please provide the current operating agreement.
- b. Please provide any document that describes, sets the parameters for, or is a basis for, a planned operating agreement or other document with respect to maintenance, inspection and repair activities on the post-Transaction PAS lines.

RESPONSE:

B&E objects to this request on the ground that the reference to “other document with respect to maintenance, inspection and repair activities” is vague and overbroad. Without waiving this objection or the General Objections set forth above, (a) B&E directs ARU to the Railroad Operating Agreement attached as Exhibit 2C to the Application filed in STB Finance Docket No. 35147 on May 30, 2008, and (b) B&E directs ARU to the Term Sheet Agreement included in the Amended Petition filed in Sub-docket No. 5.

Discovery Request No. 6

The Term Sheet Agreement included in the Application states that “With respect to annual capital maintenance work, PAS lines, will develop an annual budget and CSXT or NSR will have first priority to perform that work, with OpCo [the GWI subsidiary, now presumably P&S/B&E] or a PAS-approved contractor having responsibility thereafter subject to the terms of any applicable OpCo labor agreements. Please provide any document that describes, sets the parameters for, or is a basis for development of a budget for or plans for annual capital work on the post-Transaction PAS lines.

RESPONSE:

B&E directs ARU to the NSR Settlement Agreement and the Term Sheet Agreement, each submitted with the Amended Application in the primary docket. (The Term Sheet Agreement was also submitted with the Amended Petition in Sub-docket No. 5.)

Discovery Request No. 7

The Labor Impact Statement for GWI/P&S/B&E operation of the post-Transaction PAS, as supplemented by the P&S letter dated March 18, 2021 states that there currently is 1 pipefitter/sheet metal worker position on PAS, but that GWI/P&S/B&E do not intend to employ a pipefitter. How will GWI/P&S/B&E perform the work that has been performed by a pipefitter/sheet metal worker employed by PAR for its PAS operations?

RESPONSE:

B&E objects to this request on the ground that it does not seek discoverable facts but rather seeks information about B&E's future plans. Without waiving this objection or the General Objections set forth above, B&E states that it anticipates that work currently performed by a pipefitter will be absorbed by other mechanical crafts.

Discovery Request No. 8

Please provide copies of all documents referred to in answering these discovery requests.

RESPONSE:

See responses to prior Discovery Requests.

Respectfully submitted,

/s/ Eric M. Hocky

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