

BEFORE THE
SURFACE TRANSPORTATION BOARD

CSXT/PAR-33

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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

RESPONSE TO ENVIRONMENTAL COMMENTS

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FINANCE DOCKET NO. 36472

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—CONTROL AND MERGER—

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RESPONSE TO ENVIRONMENTAL COMMENTS

Applicants¹ hereby respond to comments submitted in this proceeding that implicate environmental issues. As described further in this Response, CSX is working with these commenting parties to address their concerns. However, these concerns do not require action by the Board. The Merger Transaction and Related Transactions are subject to a categorical exclusion from environmental review and none of the environmental comments have identified any “extraordinary circumstances” in which the excluded transactions “may have a significant effect” – the standards by which the Board will environmentally review a categorically excluded action. The environmental comments either relate to pre-existing conditions or are the natural consequence of railroad operations, not the consequence of extraordinary circumstances caused by the Merger Transaction and Related Transactions. Applicants have addressed and will continue to address these concerns through cooperative interaction with the commenting parties. Therefore, Applicants respectfully request that the Board confirm its preliminary conclusion that

¹ The acronyms and defined terms used in this Response are the same as those used in *Decision No. 4* in this proceeding, served by the Board on July 30, 2021, or in the Revised Application filed in this proceeding on July 1, 2021.

an environmental and historic review of the Merger Transaction and Related Transactions is not required.

I. Background

In Exhibit 4 to the Revised Application, filed in this proceeding on July 1, 2021, Applicants explained that environmental and historic documentation is not required for this proceeding because a categorical exclusion applies to the Merger and Related Transactions and none of the traffic-related thresholds set by the Board for review of categorically excluded control transactions would be exceeded because of the proposed actions.

Applicants explained that the Merger and Related Transactions will have a positive impact on the environment. Over time, Applicants expect to convert certain existing truck movements to rail as rail users in New England identify new market opportunities. This will have positive environmental consequences, with reductions in fuel consumption, air emissions and highway congestion. With improved rail operations, the existing rail network in New England will become more fluid, resulting in fewer idling locomotives, less delay at interchange locations, and fewer power swaps with connecting carriers. The Operating Plan attached as Exhibit 13 to the Revised Application describes the gains in fuel efficiency and reduction in emissions that CSXT expects to achieve on the PAR System by modernizing the Springfield Terminal locomotive fleet and implementing emissions-reducing technologies. These developments will have substantial benefits for the environment.

In *Decision No. 4*, served on July 30, 2021, the Board accepted the Revised Application and “preliminarily conclude[d], based on the current record, that the Merger Transaction qualifies for a categorical exclusion from environmental review . . . and that no historic reporting . . . is required.” *Decision No. 4*, slip op. at 26. The Board also concluded that “the other Related Transactions do not appear to require environmental or historic reviews.” *Id.* The Board

explained that “absent extraordinary circumstances, once a project is found to fit within a categorical exclusion, no further environmental review under NEPA is warranted.” *Id.*, slip op. at 24. The Board made its preliminary determination because “it does not appear that the thresholds triggering an environmental review would be met, and there is nothing in the available environmental information to indicate the potential for significant environmental or historic impacts resulting from the proposed merger transaction.” *Id.*, slip op. at 25-26.

In *Decision No. 4*, slip op. at 26-27, the Board requested that Applicants provide certain additional environmental information on traffic forecasts through 2027 on a segment-specific basis. On August 19, 2021, Applicants submitted CSXT/PAR-24, providing the Board with the requested traffic estimates through 2027. Given the inherent uncertainty in forecasting traffic growth far into the future, particularly given recent market fluctuations caused by Covid, CSXT presented a range of possible outcomes. These traffic forecasts confirm that under any plausible scenario the categorical exclusion from environmental review generally applicable for control transactions should continue to apply here, because none of the Board’s thresholds would be exceeded because of the Merger Transaction and Related Transactions. There will be no increase of eight trains per day on any line segment, and no 100% increase in rail traffic or gross-ton miles. *See Decision No. 4*, slip op. at 24-25.

The Board also required any additional third-party environmental comments to be submitted by September 17, 2021, and stated that “[a]fter considering the additional information from CSXT and any public comments received during the environmental comment period, OEA will make a final recommendation to the Board regarding whether any environmental or historic review is required.” *Id.*, slip op. at 27. Comments on environmental issues have been limited and focused on a few discrete issues and geographic regions. Not one comment has identified an

extraordinary circumstance arising from the Merger Transaction and Related Transactions that creates a significant environmental effect that would warrant environmental and historic review by the Board.

Applicants have consulted with the Board's Office of Environmental Analysis ("OEA") throughout this proceeding, and Applicants understand that OEA and the Board will consider this Response from Applicants to the third-party environmental comments submitted by the September 17 deadline in making the Board's final determination regarding whether to require any environmental and historic review.

II. Response to Comments

Several commenters have raised issues relating to the environmental impact of rail operations contemplated by the Merger Transaction and the Related Transactions. Applicants acknowledge their concerns and are working with these commenters to address their concerns. However, as explained below in response to each comment, none of the environmental comments diminish the application of the Board's categorical exclusions or present the "extraordinary circumstances" that would cause the Board to conduct further environmental review notwithstanding the categorical exclusion applicable here. *See id.*, slip op. at 24; 40 C.F.R. § 1501.4.

A. Village of Voorheesville

On July 20, 2021, the Village of Voorheesville, N.Y. ("Voorheesville") filed a letter in this proceeding, raising concerns about the impact of the rehabilitation of an existing connection in Voorheesville between an existing NSR line and CSXT's Selkirk Subdivision (the "Rehabilitation Project") and the related NSR operation of one train pair (two trains total) per day over the NSR line, through the rehabilitated connection, and onto the CSXT Selkirk Subdivision. The Voorheesville comment covered three issues: (1) the impact of the

Rehabilitation Project on pre-existing efforts to establish a “quiet zone” in Voorheesville, (2) simultaneous closure of NSR and CSXT at-grade crossings in Voorheesville as an NSR train moves through the area, and (3) the condition of an existing railroad overpass on the CSXT Selkirk Subdivision over Maple Street in Voorheesville.

After receiving Voorheesville’s comment, CSXT and NSR contacted Voorheesville to begin discussions to address their concerns. The parties have met multiple times, including an on-site visit with representatives from New York State Department of Transportation (“NYSDOT”), Albany County, and the Federal Railroad Administration (“FRA”) to discuss implementation of a quiet zone in the Village. CSXT and NSR hope that the parties can reach a mutually agreeable resolution of Voorheesville’s concerns, which may include assistance with completion of the quiet zone project and commitments to manage operations to reduce impacts on Voorheesville.

Whether or not the parties ultimately resolve Voorheesville’s concerns, the issues raised by Voorheesville do not diminish the Board’s preliminary conclusion that environmental and historic reviews are unnecessary in this proceeding.

1. Environmental review is not required for actions that do not require a Board license, or for trackage rights operations.

The Board recently confirmed that actions taken by railroads outside the Board’s licensing jurisdiction do not trigger environmental review requirements. *Application of the Nat’l Passenger R.R. Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc. and Norfolk S. Ry. Co.*, FD 36496, slip op. at 10 (STB served Aug. 6, 2021) (emphasis added) (citations omitted) (“*Amtrak-CSXT/NSR*”) (“[c]arriers do not need Board authority to repair, replace, rehabilitate, or rebuild their existing lines, and therefore can make improvements, operate additional trains and add infrastructure to such lines **without environmental review** even if the line has long been

inactive and is in disrepair.”). Consistent with this precedent, for several reasons, the Rehabilitation Project and NSR’s proposed operations on its existing line and the CSXT Selkirk Subdivision trigger no environmental or historic review obligations.

First, NSR can implement the Rehabilitation Project without an STB construction license and without environmental review. We explained this issue in depth our April 7, 2021, letter. *See* CSX Env’tl. Comment 5. The NSR line connecting with the CSXT Selkirk Subdivision in the Village exists today and has never been abandoned. The Rehabilitation Project will not involve a new or extended rail line and would not enable NSR to penetrate or invade any new markets. NSR simply needs to rehabilitate the existing connection and CSXT will need to add a new turnout. Neither action requires a license from the Board. While the Board noted that the trackage rights agreement submitted by NSR refers to the “construction” of a connecting track, *Decision No. 4*, slip op. at 20, n.34, the reference to “construction” is only to the construction activity needed to rehabilitate the existing connecting track so it can safely accommodate a passing train. This is not a new line construction that might require Board authority under 49 U.S.C. § 10901 and corresponding environmental review.

Second, operating two NSR trains per day over NSR’s existing rail line in Voorheesville does not require a Board operating license or environmental review. The NSR line is an active line of railroad for the Board’s licensing purposes and NSR requires no new authority to operate over it.

Third, NSR can operate two daily trains over trackage rights on the CSXT Selkirk Subdivision in Voorheesville without environmental review. While NSR does require (and is seeking) Board authority for its trackage rights operations, that action – like the Merger Transaction – is covered by a categorical exclusion from NEPA review. *See* 49 C.F.R.

§ 1105.6(c)(3) (“No environmental documentation will normally be prepared . . . for . . . [c]ommon use of rail terminals and trackage rights”). Unlike the categorical exclusion for rail mergers, the categorical exclusion for trackage rights does not require the Board to analyze whether the action would cause certain rail activity thresholds to be exceeded. *Compare* 49 C.F.R. § 1105.6(c)(1)(i) *to id.* § 1105.6(c)(3). Nevertheless, two additional trains per day running through Voorheesville on the CSXT Selkirk Subdivision (which already hosts 32.7 freight trains per day)² is “well short of the level of operations the Board has determined has enough potential for environmental impacts to warrant environmental reporting and NEPA documentation. . . .” *Amtrak-CSXT/NSR*, slip op. at 9 (finding the same for an increase of four trains per day over a line segment).

2. The Rehabilitation Project and NSR operations do not require environmental review because they are not “extraordinary circumstances” that would have a “significant effect.”

Because these actions do not represent “extraordinary circumstances in which a normally excluded action may have a significant effect,” 40 C.F.R. § 1501.4, they do not “warrant departure from the Board’s normal process.” *Amtrak-CSXT/NSR*, slip op. at 10.

a. The Rehabilitation Project and the NSR operations will not interfere with implementing the quiet zone.

Voorheesville’s most significant concern appears to be establishing a quiet zone, which requires Voorheesville to upgrade the existing safety systems / active warning devices associated with the at-grade crossings of the existing CSXT line through Voorheesville. A “quiet zone” is an exemption to the FRA rule requiring trains to sound their horns when approaching public highway-rail grade crossings. *See* 49 C.F.R. Part 222, Subpart C. A quiet zone may be a section of rail line at least one-half mile in length that contains one or more consecutive public grade

² *See* Revised Application, Ex. 13 at 17.

crossings or a single public grade crossing at which locomotive horns are not routinely sounded. The map attached to Voorheesville's comment depicts the two existing at-grade crossings of the CSXT Selkirk Subdivision in Voorheesville (at South Main Street / CR 201 and Voorheesville Avenue / CR 306) at issue in the existing quiet zone project.

The existing at-grade crossings of the CSXT Selkirk Subdivision at South Main Street and Voorheesville Avenue host an average of 32.7 daily CSXT trains. The Village's interest in a quiet zone long predates the Merger Transaction and Related Transactions and reflects the large number of CSXT trains that already operate through the Village and sound their horns at these crossings. CSXT has been working with both the Village and Albany County on their proposed establishment of a quiet zone at this location. CSXT understands that funding and political obstacles have hindered the quiet zone effort in the last several years, but CSXT will assist Voorheesville in addressing those obstacles. Once those obstacles are overcome, the Village can advance its goal of establishing a quiet zone covering the CSXT crossings.

The Rehabilitation Project and the NSR operations will not interfere with implementing the Village's proposed quiet zone at the CSXT crossings. The Merger Transaction and Related Transactions will add only two NSR trains per day through the Voorheesville Avenue crossing, while the CSXT crossing at South Main Street will see no increase in traffic. The Merger Transaction and Related Transactions will not alter the requirements for a quiet zone at these crossings. CSXT remains committed to continued cooperation with the Village and County in their design of the quiet zone and the associated roadway improvements at the CSXT grade crossings.

As to the existing at-grade crossing of the NSR line and South Main Street, the Rehabilitation Project will feature improved automatic warning devices (lights, gates, and bells)

and improvements of the road alignment, all at NSR's expense. Subject to FRA review and approval, and the involvement of other state and local entities involved in rail crossing issues, these improvements may enable qualification of the NSR at-grade crossing as an independent quiet zone, or allow the crossing to be included in the quiet zone that includes the two at-grade crossings of the CSXT Selkirk Subdivision. Again, if the political and funding obstacles that have hindered the Village's efforts to date can be overcome, there is every reason to expect that the Village can achieve its quiet zone objectives as to both the CSXT and NSR crossings.

b. The blocked at-grade crossings resulting from NSR operations do not meet the Board's thresholds for environmental review.

Voorheesville also expressed concern that the two daily NSR trains may be long enough to block three at-grade crossings at a time (School Road, South Main Street, and Voorheesville Avenue) as the NSR trains travel once per day from the NSR line through the connection onto the CSXT line and return once per day in the opposite direction. Voorheesville focused its concern on the possibility that these blocked crossings could interfere with emergency vehicle response times. Voorheesville's concern is understandable but unavoidable for train movements over grade crossings. CSXT understands that NSR is willing to commit to stage and operate its trains to reduce potential impacts on Voorheesville.

The map attached as Exhibit A shows that the School Road crossing is approximately 3,000 feet from the South Main Street crossing, and the Voorheesville Avenue crossing is approximately 1,100 feet from the South Main Street Crossing. Under the NSR Settlement Agreement, attached as Exhibit 22-C to the Revised Application, the two NSR trains that will travel through these crossings will be limited to 9,000 feet plus locomotives. The short time that a particular grade crossing will be blocked as the NSR train moves through Voorheesville is typical of any at-grade crossing. There is nothing extraordinary about the NSR trains. While

there may be a period when all three crossings are blocked, that period will be small given the distance between the crossings. By the time a particular train has reached the third crossing, the tail end of that train will be very close to moving beyond the first of the three crossings.

Putting aside the categorical exclusions applicable to the Merger Transaction and Related Transactions and the Rehabilitation Project and the lack of Board licensing jurisdiction over the activities at issue, discussed above, the thresholds that the Board has used to determine whether to review grade crossing interference would not be met here. For example, in a recent control proceeding where the Board had decided to prepare an environmental impact statement, the Board calculated crossing delay and impacts only for at-grade crossings where: (1) train traffic would increase by **three or more** trains per day on roadways with expected traffic volumes greater than 2,500 average daily traffic, or (2) where two or more crossings are within 800 feet of each other. *See Canadian Nat'l Ry. Co. & Grand Trunk Corp.—Control—EJ&E W. Co.*, FD 35087, Draft Env't Impact Statement § 4.3.1.1 (STB served July 25, 2008). And the threshold for the Board to analyze emergency vehicle response was an increase of **eight or more** trains per day on segments with community facilities within two miles of the rail line.

Because the two daily NSR trains fall below the Board's thresholds for analysis of grade crossing impacts, and because none of the three affected crossings are within 800 feet of each other, the NSR operations through these crossings do not meet the thresholds set by the Board for detailed environmental review.

c. The NSR operations will not affect the Maple Street overpass.

Finally, Voorheesville noted a concern about an existing concrete railroad overpass on the CSXT Selkirk Subdivision over Maple Street. Voorheesville claimed that the concrete was in "deteriorating condition" and that the condition would be worsened by the two daily NSR trains that will run on this line. Upon learning about Voorheesville's concerns, CSXT confirmed that

the bridge has no structural deficiencies. CSXT shares Voorheesville's concerns about safety related to this overpass and is committed to working with Voorheesville and relevant stakeholders to explore ways to address cosmetic issues associated with the concrete walls. However, the two daily NSR trains that will move over this overpass will have no effect on the condition of the bridge. The CSXT Selkirk Subdivision and this overpass already accommodate 32.7 freight trains per day on average and can easily accommodate the addition of two new NSR trains. The cosmetic issues are pre-existing and will not be affected by the proposed transaction.

B. Altamont Free Library

On August 19, 2021, Joseph Burke, Director of the Altamont Free Library (the "Library"), wrote on behalf of the Library to express concerns regarding the impact of operating the proposed two daily NSR trains over the Main Street at-grade crossing in the Village of Altamont ("Altamont"). The Library is also concerned about potential damage to its building. The Library is housed in the Altamont Train Station, adjacent to the NSR line. Before its current use by the Library, the station was used by NSR's predecessors to serve Altamont.

CSXT and NSR acknowledge the Library's concerns are understandable for anyone with a structure close to an active rail line. Representatives from CSXT and NSR have met with Mr. Burke to discuss his concerns, and CSXT and NSR hope that the parties will reach a mutually agreeable resolution of the Library's concerns. However, as with Voorheesville's concerns, the Library's concerns do not require environmental review.

First, operating two NSR trains per day over NSR's existing rail line through Altamont does not require a Board operating license. The NSR line is an active line of railroad and NSR requires no new authority to operate over it. Therefore, environmental review is not required. *See supra* Section II.A.1.

Second, the NSR operations are not “extraordinary circumstances” that would have a “significant effect” on the Library or Altamont, and thus do not require environmental review. As established above in Section II.A.2.b., the temporary blockage of the Main Street at-grade crossing resulting from NSR operations of two daily trains does not meet the Board’s thresholds for environmental review. CSXT and NSR understand the Library’s concerns about blocked crossings, but the impact of two daily NSR trains on the at-grade crossing in Altamont will be limited to a few minutes per day and is typical of any at-grade crossing. There is a grade-separated highway overpass (Bozenkill Rd) of the NSR line that would allow emergency vehicles to traverse the NSR line. CSXT understands that NSR intends to implement 25 mph maximum authorized track speeds on its line, which would allow an NSR train to clear the crossings in approximately 4-5 minutes.

As to the Library’s vibration concerns, the vibration effects of the NSR operations will be neither extraordinary nor significant. The Library building is a former train station, which has apparently been located adjacent to an active railroad line for over 120 years. CSXT understands that NSR will commit to install continuous welded rail on the tracks adjacent to the library, which should minimize any vibration impacts from the NSR operations.

C. Wachusett Reservoir

Several stakeholders, including the Massachusetts Water Resources Authority (“MWRA”), have submitted comments in this proceeding regarding the rail line between Worcester, MA and Ayer, MA, which runs for short segments along or over the Wachusett Reservoir (the “Reservoir Segment”).³ CSXT appreciates there are longstanding concerns about

³ In addition to MWRA, concerns related to the Wachusett Reservoir have been raised by several commenters in this proceeding. *See Decision No. 4*, slip op. at 19. *See also* Comments and Request for Conditions of MassDOT and MBTA, filed Aug. 27, 2021; Opening Comments of the U.S. Dept. of Transp., filed Aug. 27, 2021.

rail infrastructure and operations on the Reservoir Segment. CSXT acknowledged these concerns in Exhibits 4 and 4-A to the Revised Application and explained that CSXT had met repeatedly with representatives of MWRA and MassDOT to explore ways to strengthen the pre-existing rail infrastructure and to address their concerns over rail transportation on the line between Worcester and Ayer. CSXT also stated that it had looked at prior proposals for infrastructure improvements and had identified concrete steps that can be taken, at CSXT's expense, to upgrade that line segment.

CSXT also explained in Exhibit 4-A that the Merger and Related Transactions will not have a significant impact on environmental and safety issues related to the Reservoir Segment, for several reasons:

- a) only one intermodal/automotive train pair per day will be added to the line, well below the level of train traffic that triggers the need for environmental reporting;
- b) the line handles only a single train, each direction, so adding one pair of intermodal/automotive trains per day can easily and safely be accommodated on the line;
- c) the train pair to be added is an intermodal/automotive train, and such trains are substantially less prone to rail accidents than carload trains;
- d) intermodal containers pose less risk to the Reservoir than carload traffic, and the carload traffic currently moving on the line will be reduced; and
- e) while the gross ton-miles per year on the line segment will increase, the percentage change is well below the STB's threshold set out in 49 C.F.R. § 1105.7(e)(5).

In support of the Board's preliminary conclusion that no environmental or historic review is required of the Merger or Related Transactions (including any review of the Reservoir issues), the Board stated:

While environmental concerns relating to the Wachusett Reservoir have been raised by several commenters, most of the impacts they raise are already present given that there is existing PAR carload train traffic on the line in that area. Thus, those impacts would not be caused by the Merger and Related Transactions. Although

there would be some additional traffic on the line that traverses the reservoir under the Merger and Related Transactions, it amounts to only one pair of trains per day (one loaded and one empty). CSX states that those intermodal and automotive trains would be less prone to accidents and derailments than carload trains and that the number of carload trains actually would be reduced under the Merger Transaction. (CSX Env'tl. Comment 4.) In addition, CSX has committed to actively working with all interested parties to explore ways to strengthen the existing rail infrastructure in the area around the reservoir, including by agreeing to upgrade 7.6 miles of line adjacent to the reservoir to FRA Class 3 standards. (See *id.*; Revised Appl., Ex. 4, Env'tl. Matters 6.)

Decision No. 4, slip op. at 26.

MWRA's August 27, 2021, comments reiterated its concerns relating to the movement of trains on the Reservoir Segment rail lines. MWRA did not request that the Board conduct an environmental review of the proposed transaction, but instead indicated that its objective has been to reach a written accord with CSXT regarding infrastructure improvements. MWRA noted that "[w]hile MWRA has had productive discussions with the applicants (primarily CSX Transportation, Inc. – 'CSXT') to address its concerns, a written accord has not been reached." Comments and Request for Conditions of MWRA at 2, filed Aug. 27, 2021. MWRA further identified certain conditions that "the Board can and should address by way of specific conditions on approval" of the Merger Transaction if the parties cannot reach a written agreement. *Id.*

As the Board noted in *Decision No. 4*, CSXT will work actively with local agencies to improve the existing rail infrastructure on the Reservoir Segment. And under this commitment, CSXT and MWRA have made substantial progress in negotiations regarding each area identified by MWRA. In particular:

- CSXT has agreed to upgrade the tracks and track structures within the Reservoir Segment to no less than FRA Class 3 standards;
- CSXT will maintain the tracks and track structures within the Reservoir Segment to no less than FRA Class 3 standards;

- CSXT has agreed that no trains, locomotives, or hi-rail vehicles will operate at a speed over 25 miles per hour (FRA Class 2 track speed) within the Reservoir Segment;
- Except in limited safety-related circumstances, CSXT has agreed not to park or otherwise idle trains within the Reservoir Segment;
- CSXT will provide MWRA and MassDOT/MBTA with information describing the type and quantity of hazardous materials transported over the Reservoir Segment during the previous month;
- CSXT will notify MWRA and MassDOT/MBTA of any relevant derailment, spill, or release;
- CSXT has agreed to the installation of dragging equipment and hot bearing detectors at either end of the Watershed.

CSXT is confident that the parties will ultimately reach a mutually agreeable resolution of the MWRA's concerns that will include a written accord with MWRA and MassDOT/MBTA. But as already noted by the Board in *Decision No. 4*, the Board need not conduct an environmental or historic review regarding the Reservoir.

D. Portsmouth, NH

On September 1, 2021, residents of the Islington Creek neighborhood in Portsmouth, N.H. submitted a comment addressing issues related to existing Springfield Terminal operations in their neighborhood. The residents noted that the “neighborhood does not object to the merger,” and instead “ask[s] that Pan Am work with us to reduce the community impact from idling trains, rail yard storage and nighttime rail activity in our neighborhood.” Letter from Lawrence Cataldo, Tomas Hiney, Robin Husslage and Nicole LaPierre at 1-2, filed Sept. 1, 2021. Separately, U.S. Rep. Chris Pappas submitted a comment on August 27, 2021, highlighting the concerns raised by the Portsmouth residents.

As discussed in greater depth in the Operating Plan submitted with the Revised Application, CSXT does not plan to materially change Springfield Terminal's operations in New

Hampshire or elsewhere on the PAR System. The concerns raised by the Portsmouth residents are pre-existing and will not be affected by the Merger Transaction. However, CSXT acknowledges the residents' concerns and will work with the residents to reduce the impact of rail operations on their community from Springfield Terminal/CSXT operations. CSXT has a strong record of engagement with communities in which it operates across its network, and Portsmouth will receive the same focus and attention following consummation of the Merger Transaction.

E. Traffic Growth Forecast Comments

As discussed in Section I above, Applicants have submitted traffic growth forecasts confirming that none of the Board's traffic increase thresholds would be exceeded because of the Merger and Related Transactions, and, therefore, the categorical exclusion applicable to control transactions should apply here. None of the filed comments invalidate – or even challenge – application of the categorical exclusion. Comments filed by the State of Vermont (“VTrans”) observe that CSXT expects that “the anticipated growth in traffic volumes [will] simply track with market conditions, with little additional growth, if any, attributable to the merger.” Letter from VTrans at 1, filed Sept. 17, 2021.

On September 20, 2021, MassDOT and MBTA (collectively, the “Commonwealth”) submitted a supplemental comment regarding the Commonwealth's earlier request that the Board impose a condition to address capacity issues on the short line segment between Ayer, MA and Willows, MA. MBTA owns this line segment, and PAS operates freight service over the segment under a perpetual freight easement. PAR/Springfield Terminal also operates over the segment in trackage rights service to connect to the PAR network. The Commonwealth is concerned that CSXT's traffic growth forecasts “failed to take an appropriately holistic view of potential rail operations in and around Ayer.” Supplement in Support of the Comments and Request for

Conditions of MassDOT and MBTA at 4, filed Sept. 20, 2021. The Commonwealth's concern is that CSXT included PAR/Springfield Terminal traffic over the Ayer-Willows segment in their traffic growth forecasts but did not project traffic increases for the PAS traffic over that same segment. *Id.*

The Commonwealth's concern with CSXT's traffic forecasts does not implicate the Board's categorical exclusion. CSXT has projected that the Merger and Related Transactions would cause PAR/Springfield Terminal traffic over the Ayer-Willows segment (and most other PAR segments) to increase by only approximately 4-11% by 2027, well below the level that triggers environmental review. CSXT/PAR-24 (Aug. 19, 2021), Wallace Suppl. V.S. at 12. The potential increases in traffic associated with PAS discussed in the Commonwealth's comments would not affect CSXT's forecast. Those traffic increases, if they occur, would not be associated with the Merger Transaction and the Related Transactions but would occur (if at all) with or without the Merger Transaction and Related Transactions. Therefore, they would not relate to the Board's categorical exclusion.

As the Commonwealth acknowledged, CSXT has met repeatedly with the Commonwealth regarding MassDOT/MBTA's concern over passenger service on the lines at issue in the Merger Transaction and Related Transactions. CSXT hopes that the parties will reach a mutually agreeable resolution of the Commonwealth's concerns. And CSXT will respond substantively to the Commonwealth's request for a condition in the response comments that Applicants intend to file by October 18, 2021.

III. Conclusion

The Merger Transaction and Related Transactions (including the NSR trackage rights operations) are subject to a categorical exclusion from environmental review. The Rehabilitation Project and NSR operations on its own line do not require an STB license and therefore do not

require environmental review. None of the environmental comments submitted in this proceeding have identified any “extraordinary circumstances” in which the excluded transactions “may have a significant effect.” Therefore, Applicants respectfully request that the Board confirm its preliminary conclusion that an environmental and historic review of the Merger Transaction and Related Transactions is not required.

Respectfully submitted,

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Dated: September 24, 2021

EXHIBIT A

VOORHEESVILLE NEW YORK



CERTIFICATE OF SERVICE

I hereby certify that I have caused this Response to Environmental Comments 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

Sally Mordi
*Attorney for CSX Corporation and
CSX Transportation, Inc.*

September 24, 2021