

SERVICE DATE – APRIL 22, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36472¹

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

AGENCY: Surface Transportation Board.

ACTION: Decision No. 2 in STB Finance Docket No. 36472; Notice of Proposed Procedural Schedule and Request for Comments.

SUMMARY: The Surface Transportation Board (Board) invites public comments on a proposed procedural schedule for this proceeding. On February 25, 2021, CSX Corporation (CSXC), CSX Transportation Inc. (CSXT), 747 Merger Sub 2, Inc. (747 Merger Sub 2), Pan Am Systems, Inc. (Systems), Pan Am Railways, Inc. (PAR), Boston and Maine Corporation (Boston & Maine), Maine Central Railroad Company (Maine Central), Northern Railroad (Northern), Portland Terminal Company (Portland Terminal), Springfield Terminal Railway Company (Springfield Terminal), Stony Brook Railroad Company (Stony Brook), and Vermont & Massachusetts Railroad Company (V&M) (collectively, Applicants) submitted a filing with the Board seeking approval under 49 U.S.C. §§ 11321-26 for: (1) CSXC, CSXT, and 747 Merger Sub 2 to control the seven railroads controlled by Systems and PAR, and (2) CSXT to merge six of the seven railroads into CSXT. In Decision No. 1, served and published in the Federal Register (86 Fed. Reg. 16,009) on March 25, 2021, the Board accepted the February 25 submission as a prefiling notification, thus allowing Applicants to supplement their submission with the requisite

¹ This decision embraces the following dockets: Norfolk Southern Railway—Trackage Rights Exemption—CSX Transportation, Inc., Docket No. FD 36472 (Sub-No. 1); Norfolk Southern Railway—Trackage Rights Exemption—Providence & Worcester Railroad, Docket No. FD 36472 (Sub-No. 2); Norfolk Southern Railway—Trackage Rights Exemption—Boston & Maine Corp., Docket No. FD 36472 (Sub-No. 3); Norfolk Southern Railway—Trackage Rights Exemption—Pan Am Southern LLC, Docket No. FD 36472 (Sub-No. 4); Pittsburg & Shawmut Railroad—Operation Exemption—Pan Am Southern LLC, Docket No. FD 36472 (Sub-No. 5); SMS Rail Lines of New York, LLC—Discontinuance Exemption—in Albany County, N.Y., Docket No. AB 1312X.

information for a “significant” transaction in accordance with the Board’s regulations, between April 25 and June 25, 2021 (i.e., two to four months after the prefiling notice was submitted).

DATES: Written comments on the Board’s proposed procedural schedule must be filed by May 6, 2021.

ADDRESSES: Any filing submitted in this proceeding should be filed with the Board via e-filing on the Board’s website. In addition, one copy of each filing must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) CSX’s² and 747 Merger Sub 2’s representative, Anthony J. LaRocca, Steptoe & Johnson LLP, 1330 Connecticut Ave., N.W., Washington, DC 20036; (4) Systems’,³ PAR’s, and PAR Railroads’ representative, Robert B. Culliford, Pan Am Systems, Inc., 1700 Iron Horse Park, North Billerica, MA 01862; and (5) any other person designated as a Party of Record on the service list.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245-0391. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: On April 1, 2021, Applicants filed a petition to establish a revised procedural schedule as directed by the Board in Decision No. 1. The Board will propose modifications to the Applicants’ proposed schedule. Under 49 U.S.C. § 11325(c), the Board must conclude the evidentiary proceedings for a significant transaction no later than 180 days after publication of notice in the Federal Register that the Board has accepted the application. Here, the Applicants have proposed a schedule in which the record would close 127 days after Federal Register publication. Although § 11325(c) allows the Board to set a shorter schedule, the Board finds that a schedule based on the full 180 days allowed by the statute is more appropriate. As the Board noted in Decision No. 1, slip op. at 8, in a “significant” transaction proceeding, applicants are required to submit more detailed information regarding competitive effects, operating plans, and other issues than in a “minor” transaction proceeding. Also, unlike in a “minor” transaction proceeding, parties in a “significant” transaction proceeding are permitted to file responsive applications, including inconsistent applications. Id. Given these procedural features of “significant” transactions, the Board finds that the schedule proposed by Applicants would be too compressed. Indeed, the Applicants’ proposed 127-day schedule here is only 22 days longer than the 105-day schedule⁴ the Applicants proposed when

² CSXT is a wholly owned subsidiary of CSXC. CSXC and CSXT are referred to collectively as CSX.

³ Systems directly and wholly owns PAR, which in turn directly and wholly owns four rail carriers: Boston & Maine, Maine Central, Portland Terminal, and Springfield Terminal. Boston & Maine directly and wholly owns Northern and Stony Brook, as well as a 98% interest in V&M. These seven rail carriers will be referred to collectively as the PAR Railroads.

⁴ A 105-day schedule is the maximum time permitted for the evidentiary proceeding in a “minor” transaction under 49 U.S.C. § 11325(d).

they sought to classify this transaction as “minor.”⁵ (See Notice 14.) Moreover, the Applicants provide no explanation why such an expedited schedule is needed. Therefore, the Board will propose the following procedural schedule.⁶

April 26, 2021	Application due.
May 26, 2021	Board notice of acceptance of application to be published in the <u>Federal Register</u> .
June 16, 2021	Notices of intent to participate in this proceeding due.
June 25, 2021	Descriptions of anticipated responsive, including inconsistent, applications due. Petitions for waiver or clarification with respect to such applications due. Comments, protests, requests for conditions, and any other evidence and argument in opposition to the Application or Related Transactions due. This includes any comments from the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (USDOT). ⁷
July 26, 2021	Responsive, including inconsistent, applications due.
September 8, 2021	Responses to comments, protests, requests for conditions, and other opposition due, including to DOJ and USDOT filings. Responses to responsive, including inconsistent, applications due. Rebuttal in support of the Application and Related Transactions due.
October 8, 2021	Rebuttal in support of responsive, including inconsistent, applications due.

⁵ Applicants’ submission was filed as an application for approval as a “minor” transaction pursuant to 49 C.F.R. § 1180.2(c). However, in Decision No. 1, the Board found that the proposed transaction should be classified as a “significant” transaction, which must meet different procedural and informational requirements, and that Applicants’ submission therefore could not be treated as an application. The Board determined that it would consider the February 25, 2021 submission a prefiling notification, as required in significant transactions. See 49 C.F.R. § 1180.4(b)(1).

⁶ The schedule proposed here is similar in duration to the schedule adopted for a “significant” transaction in Canadian Pacific Railway—Control—Dakota, Minnesota & Eastern Railroad, FD 35081 (STB served Dec. 27, 2007).

⁷ Although Applicants propose that such filings be due on July 9, 2021, which would be 44 days after the Federal Register notice accepting the application, § 11325(c)(1) calls for such filings to be submitted 30 days after the Federal Register notice.

TBD	Public hearing (if necessary). ⁸
November 22, 2021	Final briefs due. ⁹ (Close of the record.)
February 18, 2022	Service date of final decision.
March 20, 2022	Effective date of final decision.

The Board invites all interested persons to submit written comments on the proposed procedural schedule. Comments must be filed by May 6, 2021. The proposed dates in this decision are subject to change depending on the comments received or other circumstances.

The Board notes that Applicants' proposed procedural schedule included a due date for the filing of their Safety Integration Plan (SIP), as required by 49 C.F.R. § 1180.1(f)(3). The Board considers the SIP as part of its environmental review process or, if an environmental review is not required, the Board will establish case-specific procedures. 49 C.F.R. § 1106.4(b), (c). Applicants claim that an environmental review would not be required for this transaction. (Notice 34-38; CSXC and CSXT Letter to Danielle Gosselin, Acting Director, OEA, Apr. 7, 2021 (Environmental Comment EI-30550).) The Board's Office of Environmental Analysis is reviewing information submitted by Applicants on the transaction's anticipated environmental impacts and the Board will address environmental review issues in a subsequent decision.

Decided: April 19, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

⁸ The Board will decide whether to conduct a public hearing, which would be held between the filing of rebuttals and final briefs, in a later decision after the record has been more fully developed. See 49 U.S.C. § 11324(a) ("The Board shall hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.").

⁹ The Board will also determine the page limits for final briefs in a later decision after the record has been more fully developed.