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October 18, 2021

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

ENTERED
Office of Proceedings
October 18, 2021
Part of
Public Record

Submitted via e-filing

Re: STB Finance Docket No. 36472, *CSX Corporation and CSX Transportation, Inc., et al.—Control and Merger—Pan Am Systems, Inc., et. al.*

Dear Ms. Brown:

I am attaching for e-filing in the above-captioned proceedings the Response of the State of Vermont to Comments Filed in Response to the Application.

Please do not hesitate to contact me with any questions.

Yours very truly,



Charles A. Spitulnik
Counsel for the State of Vermont

Enclosure

Cc: All parties of record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36472

**CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., ET AL.**

**RESPONSE OF THE STATE OF VERMONT TO COMMENTS FILED IN RESPONSE TO
THE APPLICATION**

*Communications with respect to this pleading
should be addressed to:*

Dated: October 18, 2021

STATE OF VERMONT

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
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The comments received to date in these proceedings clearly reflect a substantial issue that justifies denial of the Application, but that the Applicants continue to ignore. That is, the proposed transactions as currently structured will result in an effective 2-to-1 reduction in service over key gateways and corridors connecting Vermont to the interstate rail network. This reduction in competition will leave Vermont's shippers and competing carriers at the mercy of one company, Genesee & Wyoming, Inc. ("GWI"), through two operating subsidiaries over which GWI asserts operating and marketing control. This result substantially and directly harms the Vermont rail network and is completely inconsistent with the public interest. Accordingly, the State of Vermont, acting through its Agency of Transportation ("VTrans"), hereby reiterates its request that the Board deny the Application and associated transactions, unless and until the Board imposes a condition requiring that affected gateways and corridors accessing Vermont be operated by an independent, bona fide competing carrier not affiliated with the Applicants or GWI, or any of their numerous corporate affiliates. The Board has both the authority and responsibility to place such a condition on the proposed transactions.

I. INTRODUCTION

The full history of the proposed transaction is described in the Board's previous decisions in these proceedings and will not be repeated here. In its most recent decision,

Decision No. 4 (Service Date July 30, 2021), the Board established a schedule under which initial comments in response to the Application were due on August 27, 2021, and responses to comments, protests, requests for conditions, and other opposition would be due on October 18, 2021.

As an arm of Vermont's State government, VTrans is tasked with overseeing the planning, development, implementation, and management of a statewide transportation network in the public interest. With respect to the state's rail network, VTrans is entrusted with ensuring the safe and efficient movements of goods and passengers and the economic use of State assets. As described in previous filings, VTrans is also the owner of a significant portion of Vermont's rail network. VTrans' mandate and holdings necessitate that it concerns itself with the long-term sustainability, efficacy, and competitiveness of the State's rail network. This position aligns with the Board's own mandate and sets VTrans apart from individual private railroads and shippers who are (justifiably) concerned with narrower private financial interests and not the broader public interests.

Throughout these proceedings at every available opportunity, VTrans has alerted the Board to the anti-competitive impacts of the proposed transactions and the reasons those transactions are not consistent with the public interest. VTrans has specifically focused on the proposal in the Docket No. F.D. 36472 (Sub-No. 5), *Pittsburgh & Shawmut RR, LLC d/b/a/ Berkshire & Eastern R. – Operation of Property of Pan Am Southern LLC* (the "B&E Petition") to have a GWI subsidiary operate the Pan Am Southern ("PAS"). See VTrans Opposition to Application and Preliminary Comments, STB Docket No. FD 36472 (Filed March 17, 2021); VTrans Reply to Applicants' March 18, 2021 Response to Initial Comments, STB Docket No. FD 36472 (Filed March 22, 2021); VTrans Comments in Opposition to the Application, STB Docket No. FD 36472 (Filed August 27, 2021) ("VTrans August 27 Comment"). On this point VTrans has previously commented, and furnished

detailed testimony supporting those comments, that the proposed transactions would result in an effective 2-to-1 reduction in competitive access over the Connecticut River Line corridor connecting Vermont to lines in Massachusetts and also via the Hoosick Junction, N.Y. gateway (about five miles west of the Vermont/New York state line), and that Applicants' voluntary agreements and commitments fail to mitigate this 2-to-1 reduction. VTrans has also previously highlighted the considerable impact that the proposed transactions could have on the preservation and growth of passenger service in the state. *See* VTrans August 27 Comment.

VTrans has furthermore argued to the Board that, pursuant to 49 U.S.C. § 11324(d), the Board shall not approve the proposed transactions if they will substantially lessen competition, or if the anti-competitive effects of the transactions outweigh the public interest in meeting significant transportation needs. *See also* 49 C.F.R. § 1180.2(c)(i) (emphasizing the Board's attention to merger and acquisition transactions that reduce competition). As VTrans has previously noted, where a 2-to-1 situation will result, the Board's longstanding practice is to impose conditions or otherwise ensure preservation of competitive service by at least two railroads where it exists before a proposed merger transaction. *See Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1), slip op. at 19 (Service Date June 11, 2001).

The following Response focuses on the comments submitted by various parties in this proceeding and, in particular, on the number of positions echoing VTrans' concerns about the anti-competitive impacts that make the proposed transaction directly inconsistent with the public interest. The Board has the authority to and must address this issue through the imposition of an appropriate condition that will ensure preservation of competitive options for rail service in Vermont. Without such conditions, the Board cannot approve the Application.

II. RESPONSE

A. Key commenters observe the clear anti-competitive impacts of the Application and proposed transactions on Vermont's rail network.

Key commenters speaking from critical vantage points, including federal agencies tasked with monitoring anti-competitive and transportation activities, along with common carrier operators serving shippers in Vermont and New England, have all echoed VTrans' concerns regarding the anti-competitive impacts of the Application and the proposed transactions on Vermont's rail network. As the comments from these parties reflect, the transactions as proposed will have the overall effect of reducing competitive alternatives for Vermont rail shippers and cannot be approved absent the imposition of conditions that will address the harms they will otherwise create.

The U.S. Department of Justice's Antitrust Division ("DOJ"), a federal entity whose mission it is to promote economic competition through enforcing and providing guidance on antitrust laws and principles,¹ has voiced opposition to and concern regarding the anti-competitive impacts of the Application and the B&E Petition. Comment by the U.S. Department of Justice, Antitrust Division, STB Docket No. FD 36472, at 2 (Filed Aug. 26, 2021) ("DOJ Comment"). Pursuant to its statutory right to intervene in transactions of regional or national transportation significance under 49 U.S.C. § 11325(c)(1), DOJ states in comments submitted to the Board that the Applicants' currently proposed remedies to address anti-competitiveness "do not accord with best practices, . . . are less likely to succeed than the kinds of robust relief that the [DOJ] has sought in prior cases, and will not fully address the competitive concerns posed by the CSX-Pan Am transaction." *Id.* at 1, 3. DOJ specifically identifies GWI's acquisition of PAS as problematic, stating: "If the CSX-Pan Am transaction

¹ See U.S. Dept. of Justice, Antitrust Div., About the Division, <https://www.justice.gov/atr/mission> [visited Oct. 7, 2021].

is consummated and B&E becomes the contract operator of the Knowledge Corridor PAS line, G&W subsidiaries will be both the contract operator of PAS and PAS's primary competitor. In effect, the proposed remedy reduces the numbers of competitors in the Knowledge Corridor from two to one." *Id.* at 4. DOJ suggests instead that "[t]he Board could select a divestiture buyer unaffiliated with G&W, and thus could maintain the independent competition between G&W and PAS on the NECR line." *Id.* at 6. These comments, coming from the federal government's foremost experts regarding anti-competitive activity, echo VTrans' position and previous comments regarding the proposed transactions.

The comments of the Department of Transportation and the Federal Railroad Administration (jointly, "USDOT") also reflect the concerns of VTrans and others specifically with respect to granting exclusive control of the Connecticut River Line to GWI subsidiaries. Comments of U.S. Department of Transportation and the Federal Railroad Administration, STB Docket No. 36472, at 4-5 (Filed Aug. 27, 2021) ("USDOT Comment"). USDOT highlights the impact of the proposed transactions on shippers and short-line service in Vermont, and correctly indicates that the Board should give substantial weight to DOJ on matters of competition. *Id.* at 5-6.

Although driven by pecuniary rather than public interests, competing private railroads may in some cases shine the brightest light on a proposed transaction's anti-competitive implications, as they may feel the impacts most directly and acutely. This is certainly reflected in the first round of comments submitted by direct competitors to the Applicants.

As the current operator of Vermont’s publicly owned rail lines, whose access to the rest of the national rail network relies on lines affected by the proposed transactions,² Vermont Rail System (“VRS”) will clearly be impacted by the proposed transactions, and specifically the B&E Petition. VRS’s initial comments reflect the vital role PAS service has played in terms of providing healthy competition on the Connecticut River Line (referred to by Applicants as the “Knowledge Corridor”). Comment of Vermont Rail System, STB Docket No. FD 36472, at 8 (Filed Aug. 27, 2021) (“VRS Comment”).

VRS’s initial assessment of the Application is unequivocal: “the B&E-PAS transaction threatens competition in Vermont, and is plainly contrary to the Rail Transportation Policy (‘RTP’) of [49 U.S.C.] Section 10101.” VRS Comment at 10. VRS in its first round of comments identifies precisely the same issue that VTrans has highlighted, namely reduction of competition on a 2-to-1 corridor along the Connecticut River Line and at a 2-to-1 connection at Hoosick Junction in New York as a result of the transactions. *Id.* at 10-11. These connections, VRS notes, constitute the primary rail gateways providing access between lines owned by VTrans and operated by VRS, on the one hand, and the national rail network, on the other. Under the current proposal, these gateways would be controlled by GWI companies, although nominally different members of the GWI corporate family would be serving those points. *Id.*

VRS also describes its specific experience in shipping road salt and liquified petroleum gas (“LPG”) and its interactions with GWI-controlled rail carriers. From this experience, VRS states that “GWI would surely explore any and all opportunities to use the experience and proprietary information that it only could gain by way of its operation of PAS

² VRS relies on CSX interchanges that connect its non-contiguous operations outside Vermont—i.e., the New York & Ogdensburg Railway Co. (“NYPG”) that interchanges with CSX in Norwood, NY, and the New England Southern Railroad Co. (“NEGS”), which interchanges with Pan Am in Concord, NH—to the rest of the interstate rail network.

(through B&E) to stifle, unfairly, road salt and LPG flows (among others) to VRS served distribution facilities to the benefit of nearby [GWI-owned rail carrier] NECR terminals, thus permanently depriving VRS of this critical traffic.” *Id.* at 11-12.

The anti-competitive issues highlighted by VRS cannot be ignored. Even if VRS is able to achieve an agreement with Applicants that provides it with benefits at locations other than the interchanges and on the corridors about which VTrans has expressed concerns, an agreement that does not address these issues does not create a clear pathway for approval of the proposed transaction. As Daniel Delabruere, VTrans’ Rail & Aviation Bureau Director states in his Supplemental Verified Statement that is submitted along with this Reply:

Any outcome of such discussions [aimed at achieving an agreement between or among Applicants and VRS] that does not address the 2-to-1 reduction in competition, but might nevertheless result in VRS (or other parties) changing its (or their) position to support the proposed transactions would be deficient. Until the Applicants resolve the underlying structural anti-competitive nature of the proposed transactions, VTrans will continue to ask this Board to reject the entire packet of transactions.

Supplemental Verified Statement of Daniel Delabruere, attached hereto as Exhibit 1, at 2, para. 5.

Canadian Pacific Railway (“CP”), one of the country’s seven Class I freight railroads, succinctly lays out the new competitive landscape under the proposed transactions with regard to GWI’s acquisition:

“[A]s a wholly-owned subsidiary of Genesee & Wyoming, B&E will have conflicting interests that could impede the success of PAS. . . . Although B&E is undertaking a contractual obligation to price PAS services in a manner that furthers the interests of PAS’s two owners, this sort of contractual undertaking is not the same as the inherent and undivided competitive interest that Pan Am (along with PAS and NS) have today.”

Comment of the Canadian Pacific Railway Company Limited, STB Docket No. FD 36472, at 21 (Filed Aug. 27, 2021). CP also discusses the proposed transaction’s adverse effects on the long-term viability of the “Hoosac Tunnel Route” between Boston and Albany,

which includes the critical Hoosick Junction gateway that connects Vermont's State-owned rail lines to the south and west. *See id.* at 7-9.

While the impacts of the Application on competitors such as VRS and CP are a central consideration for the Board, the Board's ultimate duty is to protect the needs of shippers and general public by promoting a competitive, efficient, and safe national rail network. *See* 49 U.S.C. § 10101; 49 C.F.R. § 1180.1. The Board must therefore consider the broader structural implications of the Application and B&E Petition, whether or not specific competitors are placated through agreements that fail to address the underlying anti-competitive impacts of the proposed transactions.³

Recently, VTrans has engaged with representatives of the Applicants to discuss VTrans' concerns regarding the 2-to-1 reduction in service that would result from the proposed transaction. VTrans welcomes the Applicants' willingness to discuss these concerns and is hopeful that the Applicants will continue to work with VTrans towards an arrangement that meets the goals of the proposed transaction without harming competitive rail access in Vermont. Until then, the message to the Board should be clear: the comments of relevant stakeholders with informed vantage points clearly articulate that the acquisition by a GWI subsidiary (*i.e.*, B&E) of key gateways and corridors providing access to Vermont's rail network would in effect constitute a 2-to-1 reduction in service and would have

³ VTrans is aware that there are ongoing negotiations between the Applicants and other interested parties, including competitors such as VRS, regarding support for the proposed transactions. *See* Supplemental Verified Statement of Daniel Delabrure, attached as Exhibit 1. To VTrans' knowledge, these negotiations include discussion of issues outside the scope of the Application that may be favorable to the overall interests of the specific private parties involved but that do nothing to address the 2-to-1 reduction in service that would result from approval of the Application and B&E Petition as currently structured. *Id.* VTrans strongly urges the Board to take this into consideration when assessing any potential change in position by the Applicants' competitors with respect to support for the proposed transactions. The Board should carefully scrutinize any new support for the Application to determine whether the underlying structural anti-competitive nature of the proposed transactions has actually been addressed. As VTrans continues to emphasize, until those anti-competitive impacts have been solved this Board cannot approve the Applications.

significant detrimental impacts on competitive service in Vermont. Until adequately addressed, this impact outweighs the potential benefits of the proposed transactions.

B. Key commenters agree that while the anti-competitive aspects of the Application are avoidable, the Applicant's current proposed measures to avoid anti-competitive impacts are completely unworkable.

To address the serious deficiencies in the proposed transaction under the B&E Petition, the Applicants promise to adhere to conditions that they assert will ensure that GWI subsidiaries serving Vermont and thus directly affecting rail operations in the State will act as competitors to each other. Like VTrans, key commenters see through these assertions, which are naïve at best.

DOJ has submitted its concerns regarding the voluntary measures proposed to mitigate anti-competitive impacts. DOJ notes that “[t]hough G&W may promise to employ certain safeguards or make certain commitments that would ostensibly enhance the incentives of B&E and NECR to complete, the Department is highly skeptical of the efficacy of these protections. B&E and NECR would potentially have significant insight into the pricing, scheduling, and other key competitively sensitive information of the other.” DOJ Comment at 5. DOJ’s conclusion is simple: “Ultimately, the easiest, cleanest, and least risky solution would be a structure remedy involving the sale of Pan Am’s stake in PAS to another party [other than GWI] that could operate PAS.” *Id.* at 6.

VRS asserts in its initial comments that, “[r]egardless of the claimed efficacy of such ostensibly competition-protecting conditions, the fact is that GWI will have no incentive to compete against itself, and it will have every motivation to explore ways to exploit the market power it would gain through common control of the two railroads that have that have for years stood as competitors for VRS traffic.” VRS Comment at 6. In support of this assertion, VRS notes that careful review of the proposed agreement terms reveals that “[s]ervice levels are subject to unspecified minimum volumes and prices are subject to increase in any of a

number of ways.” *Id.* at 12. Similarly, VRS notes that proposed commitments that B&E would not share traffic and rate data with its parent or affiliates are both highly unlikely from a business standpoint and unworkable given GWI’s centralized management of accounting for all of its rail carrier subsidiaries. *Id.* at 16.

Even parties that do not oppose the Application note, for instance, that the Applicants’ statements “too often devolve to vague and conclusory assurances, frequently divorced from specific steps that the Applicants will take.” Comments of Massachusetts Department of Transportation, STB Docket No. FD 36472, at 7 (Filed Aug. 27, 2021).

As clearly as they take issue with GWI’s near complete control of rail access to Vermont, key commenters and stakeholders also find the Applicants’ proposed mitigation measures inherently inadequate and unworkable. The Board should conclude the same and require the only practical and realistic solution: acquisition of PAS by a truly independent and bona fide competitor.

C. Key commenters agree that the impact of the proposed transactions on passenger rail is adverse to the public interest.

As VTrans has previously noted, the anti-competitive aspects of the proposed transactions are not the only problematic component of the Application. Several commenters who share VTrans’ interest in maintaining and strengthening passenger rail in the region have voiced important concerns that should be heeded by the Board.

Amtrak submits comments based on the sizeable impact that the transaction could have on its passenger rail services in Vermont and surrounding states. Comment by National Railroad Passenger Corporation (“Amtrak”), STB Docket No. FD 36472, at 5 (Filed Aug. 27, 2021). Amtrak states that significant public financial investment has gone into these lines, reflecting the important public investment at stake. *Id.* at 7. Amtrak also notes concerns with concentrating primary rail routes in the region into the hands of one entity absent the imposition of conditions that will “ensure that passenger rail interests are not jeopardized by

the concentration of control in CSXT.” *Id.* at 14. While Amtrak’s comments are largely focused on services outside of Vermont, the issues raised by Amtrak have the likelihood of indirectly impacting connected passenger service in Vermont as well as the potential for expanding service in the future.

The Massachusetts Department of Transportation (“MassDOT”) represents that State’s status as a key stakeholder in hosting more railroad lines than any other state impacted by this proceeding, including some with extensive passenger rail service. MassDOT registers concern with CSXT’s unwillingness to offer more than vague assurances that post-Transaction freight operations will not materially interfere with passenger train operations on shared track, or to provide concrete means for redressing service disruptions. *Id.* at 8. MassDOT concludes by requesting that the Board imposes conditions protecting affected passenger rail operations, including guarantees that the Knowledge Corridor will be maintained to a condition that satisfies the Federal Railroad Administration’s safety standards for Class 4 railroad track. *Id.* at 10-11. VTrans concurs with MassDOT’s concerns regarding impacts on passenger service and likewise requests that the Board adopt measures that adequately protect such service.

The USDOT filing likewise notes the potential impacts on passenger service and urges the Board to “closely scrutinize the proposed transaction to determine the impact upon passenger rail service, and should consider imposing conditions upon the applicants to ensure that existing passenger service is appropriately maintained.” USDOT Comment at 8. USDOT reminds the Board that the “restoration, enhancement, expansion, and on-time performance of passenger rail service is a key priority for USDOT and for the Biden Administration, and should also be an important component of the Board’s review of the public interest in this transaction.” *Id.*

As the comments to date reflect, the potentially serious impacts on passenger rail service in New England need to be taken into account in assessing the proposed transactions, and must be balanced along with the problematic anti-competitive issues also noted.

D. The comments in support of the proposed transactions are vague and fail to address the anti-competitive and anti-public aspects of the proposed transactions.

Notably, the comments received to date in favor of the Application largely speak in generalities regarding the positive benefits of the proposed transaction, and none of them address the glaring anti-competitive and anti-public interest issues presented by the proposed transactions and identified by VTrans and other key commenters as discussed above. *See, e.g.,* Comment of Pioneer Valley Railroad Company, Inc., STB Docket No. FD 36472 (Filed Aug. 27, 2021); Comment of Housatonic Railroad Company, Inc., STB Docket No. FD 36472 (Filed Aug. 27, 2021); Support Statement provided by CSX Corporation and CSX Transportation, Inc. from 1) John A. Graham, New Hampshire State Representative, 2) Michael D. Brady, Massachusetts State Senator, and 3) Mike Zwirko, Former President, Melrose City Council; Former Member Board of Directors, Massachusetts Municipal Association, STB Docket No. 36472 (Filed Aug. 23, 2021).

Although the service improvements that these commenters anticipate, if realized and shared for the broader public good, would indeed be a benefit of the transaction, they do not outweigh the serious anti-competitive and anti-public interest issues that VTrans and the commenters highlighted above have flagged for the Board. To date, neither the Applicants nor any other proponent of the proposed transactions has presented a plan that will effectively address the deficiencies outlined by VTrans and the commenters noted above. Likewise, direct discussions between VTrans and the Applicants have so far unfortunately not resulted in revised proposals that would address VTrans' concerns. Unless and until the Applicants change the proposed transactions to eliminate the effective 2-to-1 reduction in service facing Vermont, the Board should not be satisfied that the benefits of the Application and proposed

transactions as currently proposed outweigh the serious anti-competitive and anti-public interest concerns raised by the proposed transactions that are the subject of these proceedings.

III. CONCLUSION

In view of all of the foregoing, VTrans again respectfully requests the Board to deny the Application as proposed. The comments to date reveal that the Applicants have failed to mitigate the effective 2-to-1 reduction in competition in Vermont that would result from the Application. VTrans maintains its request that the Board impose a condition to protect competition at gateways and corridors that are key to the movement of traffic to and from Vermont. The only practical and workable means of doing so is by requiring a carrier that is completely independent of both Applicants and their corporate affiliates, and of GWI and its numerous corporate affiliates, to have the right and ability to serve those gateways and corridors. Furthermore, the Board should take appropriate measures, through conditions, to ensure the continuation and expansion of passenger service in Vermont and throughout New England.

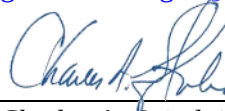
October 18, 2021

Respectfully submitted,

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EXHIBIT 1

Supplemental Verified Statement of Daniel Delabruere

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36472

**CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., ET AL.**

SUPPLEMENTAL VERIFIED STATEMENT OF DANIEL DELABRUERE

1. I am Daniel Delabruere. I have previously submitted Verified Statements in this proceeding as part of VTrans' *Opposition to Application and Petition and Preliminary Comments*, filed on March 17, 2021, as well as VTrans' *Comments in Opposition to Application*, filed on March 27, 2021. In addition, I submitted a Verified Statement on August 27, 2021 in support of VTrans continuing opposition to the proposed transactions because of their anti-competitive impact on rail freight transportation in the State of Vermont. I am incorporating those Verified Statements and the contents of the State's previous comments submitted in these proceedings by reference here.
2. The purpose of this Supplemental Verified Statement is to relate my understanding that, since the date of our filing in August 2021, Applicants in this proceeding have yet to address adequately the anti-competitive impacts that we identified and that the U.S. Department of Justice also called out in its statement filed on that same day.
3. VTrans understands that the Applicants are engaging in negotiations with various other parties and stakeholders in order to secure support for the transactions proposed under the Application.

4. To the best of my knowledge, one of the stakeholders with which the Applicants have engaged is the Vermont Rail System (“VRS”). To my knowledge, while these negotiations include discussion of issues outside the scope of the Application whose resolution may be favorable to the overall interests of the specific private parties involved, the proposed agreements do nothing to address the 2-to-1 reduction in service impacting Vermont rail lines that would result from approval of the Application and associated transactions as currently structured.
5. Any outcome of such discussions that does not address the 2-to-1 reduction in competition, but might nevertheless result in VRS (or other parties) changing its (or their) position to support the proposed transactions would be deficient. Until the Applicants resolve the underlying structural anti-competitive nature of the proposed transactions, VTrans will continue to ask this Board to reject the entire packet of transactions.
6. Further, Affiant sayeth not.

I, Daniel Delabruere, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on October 18, 2021.

DocuSigned by:

C7A036DF7A9645C...
Daniel Delabruere

CERTIFICATE OF SERVICE

I hereby certify that I have on the 18th of October, 2021, caused to be served a copy of the foregoing RESPONSE OF THE STATE OF VERMONT TO COMMENTS FILED IN RESPONSE TO THE APPLICATION, upon the following parties of record in this proceeding by email:

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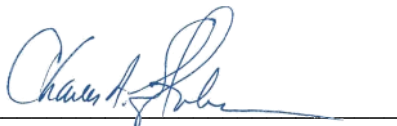
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I hereby certify that I have on the 18th of October, 2021, caused to be served a copy of the foregoing RESPONSE OF THE STATE OF VERMONT TO COMMENTS FILED IN RESPONSE TO THE APPLICATION, upon the following parties of record in this proceeding by U.S. mail:

Bennett Conard
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Secretary for U.S. Department of Transportation
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Washington, DC 20590

A handwritten signature in blue ink, appearing to read "Charles A. Spitulnik", is written over a horizontal line.

Charles A. Spitulnik
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Dated: October 18, 2021