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September 9, 2021

302986

RPUB-5

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
September 9, 2021
Part of
Public Record

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

Docket No. FD 36472 (Sub-No. 5)
Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern
Railroad -- Operation of Property of Another Rail Carrier --
Pan Am Southern LLC and Springfield Terminal Railway Company

Dear Ms. Brown:

Attached for filing in the above-captioned proceedings is a revised version of the **Comments of Republic Services, Inc., ECDC Environmental, L.C. and Devens Recycling Center, LLC in Support of Transaction** (RPUB-5), dated September 9, 2021. These Comments are identical to the RPub-5 Comments filed on September 3, 2021 except for the addition of footnote 1 on page 3, which at the request of STB staff provides clarification regarding the redactions in Attachment A to the pleading.

I would request that this filing be substituted for the RPub-5 pleading previously submitted on September 3rd. This revised filing is subject to the Petition for Leave to File Comments (RPUB-4) filed on September 3rd.

I certify that a copy of this filing has been served by electronic delivery on all parties of record in these proceedings.

FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown
September 9, 2021
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If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

/s/ *Janet H. Gilbert*

Janet H. Gilbert
Attorney for Republic Services, Inc., ECDC
Environmental, L.C. and Devens Recycling Center, LLC

JHG:tjl

Attachment

cc: Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
-- CONTROL AND MERGER --
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON & 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

DOCKET NO. FD 36472 (SUB-NO. 5)

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

**COMMENTS OF REPUBLIC SERVICES, INC.,
ECDC ENVIRONMENTAL, L.C. AND DEVENS RECYCLING
CENTER, LLC IN SUPPORT OF TRANSACTION**

Janet H. Gilbert
Stephen J. Rynn
Bradon J. Smith
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(312) 252-1500

**ATTORNEYS FOR
REPUBLIC SERVICES, INC.,
ECDC ENVIRONMENTAL, L.C. AND
DEVENS RECYCLING CENTER, LLC**

Dated: September 9, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
-- CONTROL AND MERGER --
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON & MAINE
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PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
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-- OPERATION OF PROPERTY OF ANOTHER RAIL CARRIER --
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**COMMENTS OF REPUBLIC SERVICES, INC.,
ECDC ENVIRONMENTAL, L.C. AND DEVENS RECYCLING
CENTER, LLC IN SUPPORT OF TRANSACTION**

Republic Services, Inc. (“Republic Services”), ECDC Environmental, L.C. (“ECDC”) and Devens Recycling Center, LLC (“Devens” and, collectively with Republic Services and ECDC, “Republic”) hereby submit their comments in support of the proposed transactions in these proceedings. The acquisition by CSX Transportation, Inc. (“CSXT”) of the rail carriers of Pan Am Railways, Inc. (collectively, “Pan Am”), including Pan Am’s 50% ownership interest in Pan Am Southern LLC (“PAS”), and the related proposal for Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad (“B&E”) to assume operation of PAS are in the public interest and will improve rail service and strengthen the transportation network in New England.

Republic Services is the second largest waste collection, transfer, recycling and disposal enterprise in the United States with approximately \$10 billion in annual revenue. Through

its various subsidiaries (including, for purposes relevant here, Devens and ECDC), Republic Services is a major provider of recycling and non-hazardous solid waste disposal services across the United States. Republic conducts extensive operations in New England that utilize rail services provided by the Applicants in these proceedings:

- Republic ships containerized municipal solid waste (MSW) from the Boston area by intermodal rail service via an origin transload facility located on PAS's rail line in Ayer, Massachusetts.
- Republic also ships containerized MSW from the Springfield area by intermodal rail service via an origin transload facility located on CSXT's east-west "Boston & Albany" line in East Springfield, Massachusetts.
- Republic has moved containerized MSW from the Springfield area by intermodal rail service via an origin transload facility located on PAS's north-south "Knowledge Corridor" line in Holyoke, Massachusetts, near Springfield.
- Devens owns and operates a construction and demolition (C&D) debris recycling facility on PAS near Ayer that ships significant volumes of C&D debris in gondola railcars. *See Devens Recycling Center, LLC — Petition for Declaratory Order*, Docket No. FD 34952 (STB served Jan. 10, 2007).

Republic's customers include the municipalities and localities of the surrounding region, and those communities depend on Republic to provide cost-effective outlets for recycled and waste materials. Time is of the essence for these materials as the fluid movement from each post-collection facility to landfill is critical.

Republic has previously outlined its interests in the proposed transactions in these dockets. *See Republic Notice of Intent to Participate (RPUB-1) and Republic Comments on*

Proposed “Minor” Classification of Transaction and on Petition for Exemption (RPUB-2), both dated and filed March 17, 2021. Republic has engaged in productive discussions with the Applicants and has reached agreement on matters of interest to it. In particular, among other things, PAS has committed to working in coordination and close consultation with Republic to relocate the existing MSW transloading facility located on PAS at Ayer to provide greater track capacity and improved rail service to accommodate Republic’s current and projected MSW traffic volumes. *See Attachment A hereto.*¹

Republic’s discussions and understandings with the Applicants have sufficiently resolved areas of concern that Republic may have had with the proposed transactions.² As one of the largest shippers on PAS, Republic believes those transactions present significant opportunity for the improvement of rail service on the PAS rail lines and will benefit parties which rely on a reliable and efficient rail system for their transportation needs. Republic looks forward to continuing to work with the Applicants toward a successful implementation of the proposed transactions.

¹ Attachment A includes certain redacted information which is not being submitted to the Board and which Republic does not seek to have be of record in these proceedings. Republic is thus filing only this fully public version of these RPUB-5 Comments, and has not separately filed a version with any confidentiality designation.

² Republic accordingly withdraws its RPUB-2 filing dated March 17, 2021 as it relates to such matters.

WHEREFORE, Republic respectfully requests that the Board accept and consider these comments in support of the transactions for which approval or exemption is sought in these dockets.

Respectfully submitted,

/s/ *Janet H. Gilbert*

By: _____

Janet H. Gilbert

Stephen J. Rynn

Bradon J. Smith

Fletcher & Sippel LLC

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Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

**ATTORNEYS FOR
REPUBLIC SERVICES, INC.,
ECDC ENVIRONMENTAL, L.C. AND
DEVENS RECYCLING CENTER, LLC**

Dated: September 9, 2021

ATTACHMENT A

September 3, 2021

Aaron Hegeman
Director, Rail Development
Republic Services
18500 N Allied Way
Phoenix, Arizona 85054

Re: Letter agreement regarding resolution of issues between CSX Transportation, Inc. ("CSXT"), Norfolk Southern Railway Company ("NSR"), Berkshire & Eastern Railroad, a division of Pittsburg & Shawmut Railroad, LLC ("B&E"), Pan Am Southern LLC ("PAS") and Republic Services, Inc., ECDC Environmental, L.C., and Devens Recycling Center, LLC (collectively, "Republic") in consideration for not opposing the acquisition by CSXT of Pan Am Railways, Inc. ("Pan Am") or the related transactions involving certain NSR trackage rights over CSXT or the installation of B&E as contract operator of PAS, which filings are currently before the Surface Transportation Board ("STB").

Dear Aaron:

The purpose of this letter agreement ("Letter Agreement") is to set forth the matters on which Republic, NSR, PAS, B&E and CSXT have come to agreement, in light of the proposed acquisition of control of Pan Am and its various rail carrier subsidiaries by CSX Corporation and CSXT (collectively, the "CSX Parties"), and certain related transactions involving NSR and B&E. Republic, CSXT, NSR, B&E and PAS are sometimes referred to individually herein as a "Party", and collectively as the "Parties".

The CSX Parties have filed with the STB an application (the "Application") seeking approval for the CSX Parties' acquisition of control of Pan Am and the merger of certain Pan Am subsidiaries into CSXT, among other implementing transactions related to the control and merger element of the proposed transaction (collectively, the "Transaction"). Republic's previously expressed concerns about the Transaction have now been resolved by the commitments hereby agreed upon between the Parties:

1. Agreements

- a. NSR, PAS, B&E and CSXT agree to extend the PAS Rail Transportation Agreement for [REDACTED] years upon expiration on December 31, [REDACTED];
- b. NSR, PAS, B&E and CSXT agree to extend the PAS Railroad Track Lease for [REDACTED] years upon expiration on December 31, [REDACTED]; the track lease will be subject to a total fee of [REDACTED] payable in [REDACTED] equal, annual payments;
- c. CSXT agrees to a [REDACTED]-year extension of CSXT Contract [REDACTED] upon expiration on December 31, [REDACTED];
- d. CSXT agrees to add current rates from Ayer, MA to Niagara Falls, NY and Fostoria, OH to CSXT Contract [REDACTED]; and
- e. NSR, PAS, B&E and CSXT agree to provide an exception to the Rotterdam Routing Protocol for shipments from Ayer, MA to Niagara Falls, NY and Fostoria, OH.

2. The agreements set forth in paragraph 1 above will be effective upon consummation of the Transaction. The Parties shall finalize on a timely basis following consummation of the Transaction the necessary amendments or other documentation needed to implement the above agreements.
3. NSR, PAS, B&E, and CSXT acknowledge your concerns with the service, capacity, and reliability of the existing PAS transload location in Ayer, Massachusetts for Republic's containerized municipal solid waste (MSW) traffic. We understand that waste transfer operations such as those conducted by Republic require reliable and fluid rail service to move product as quickly as possible to designated landfill sites. We acknowledge that the service that is currently provided may not be what should be expected. We believe that implementation of the proposed Transaction is a very strong step towards providing that reliable service. Notwithstanding that, PAS commits to the following:
 - i. PAS will continue to undertake efforts to restore reliable local switching service and forwarding to interchange with Norfolk Southern from Ayer to Mechanicville and providing service anticipated by Republic's current Master Transportation Agreement;
 - ii. PAS will continue to undertake ongoing and detailed efforts to find another location in the Ayer/Boston area for Republic to locate its own private intermodal facility that will provide greater track capacity and improved rail service, under similar terms as the Fitchburg yard option currently being explored, in coordination and in close consultation with Republic along the way. Republic will receive first look at any locations available or that become available in the vicinity of the Howard transfer station near Roxbury, MA or in the vicinity of its facilities in and around Ayer, MA.
4. In consideration for the foregoing agreements and commitments by NSR, PAS, B&E, and CSXT, Republic agrees that promptly following the execution of this Letter Agreement, it will submit to the STB a statement of support and withdrawal of its previous filing expressing concerns, reasonably satisfactory to NSR, B&E and CSXT, for the Transaction.
5. This Letter Agreement is intended to be binding upon the Parties and shall be construed and interpreted in accordance with Massachusetts law.

SIGNATURE PAGE TO LETTER AGREEMENT

Acknowledged and Agreed to All Terms:

REPUBLIC SERVICES, INC.

By: _____

Name: _____

Its: _____

ECDC ENVIRONMENTAL, L.C.

By: _____

Name: _____

Its: _____

DEVENS RECYCLING CENTER, LLC

By: _____

Name: _____

Its: _____

CSX TRANSPORTATION, INC.

By: _____

Name: _____

Its: _____

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____

Name: _____

Its: _____

**BERKSHIRE & EASTERN RAILROAD, a division of
Pittsburg & Shawmut Railroad, LLC**

By: _____

Name: _____

Its: _____

PAN AM SOUTHERN LLC

By: _____

Name: _____

Its: _____

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September a copy of the foregoing **Comments of Republic Services, Inc., ECDC Environmental, L.C. and Devens Recycling Center, LLC in Support of Transaction** (RPUB-5) was served by electronic mail upon all parties of record in these proceedings.

/s/ *Janet H. Gilbert*

Janet H. Gilbert