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Office of Proceedings
January 21, 2022
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Public Record

PUBLIC VERSION

January 21, 2022

CSXT/PAR-55

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

Re: **STB Docket No. FD 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**

Dear Ms. Brown:

Enclosed for e-filing in the above-referenced proceeding is a public version of CSXT's Response to Public Hearing, with appropriate redactions that the Board can place in its docket. We are concurrently filing a highly confidential version of the Response to be filed under seal.

Respectfully submitted,

/s/ Anthony J. LaRocca

Anthony J. LaRocca
Peter W. Denton
Sally Mordi
*Attorneys for CSX Corporation and
CSX Transportation, Inc.*

Cynthia T. Brown

January 21, 2022

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Enclosures

cc: Louis E. Gitomer
All 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 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

CSXT'S RESPONSE TO PUBLIC HEARING

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Dated: January 21, 2022

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

CSXT'S RESPONSE TO PUBLIC HEARING

Following the public hearing held on January 13 and 14, 2022, the Board¹ issued *Decision No. 8* in this proceeding, ordering that the hearing record in these proceedings will remain open until January 21, 2022. At the hearing, Board members expressed an interest in the parties continuing to explore negotiated resolution of concerns and requested conditions. In the days since the hearing, CSXT, NSR, and B&E have continued their efforts to resolve any outstanding concerns. We describe below those efforts, along with addressing certain additional items raised during the hearing and in late-filed comments submitted since the January 3, 2022 deadline for final briefs.

I. Further Negotiations and Related Commitments

A. Canadian Pacific

There was considerable discussion at the hearing about CP's request for an open gateways commitment with respect to the PAS Mechanicville gateway, along with CP's request

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.

for conditions that they contended would be necessary to ensure that CSXT's acquisition of an interest in PAS will not result in degraded PAS service. We were particularly encouraged by CP's oral qualifications of their written requests for conditions. CP clarified at the hearing that they were not seeking inflexible requirements that ignored changes in market conditions beyond the control of PAS and its owners. In addition, CSXT made it clear that it was willing to consider a gateway-related commitment to the extent shippers seeking transportation on PAS would receive a benefit.

Therefore, following the hearing, CSXT, NSR, and B&E re-engaged CP in an attempt to reach agreement. We are pleased to report that the parties have agreed to a resolution of CP's concerns. The agreement is attached here as Exhibit A, and CSXT hereby asks that the Board impose the terms of this agreement as a condition to the Board's approval of the Transactions and confirm that the Board has jurisdiction to enforce the agreement as a condition to the Board's approval of the Transactions.

While we have reached a settlement, CP raised a more general issue at the hearing regarding the STB's conditioning authority. In particular, CP claimed that because the "pooling" statute, 49 U.S.C. § 11322, might be implicated by the Transactions, the STB did not need to grapple with limitations to its conditioning authority under 49 U.S.C. § 11324(d). The Board could impose those conditions, CP argued, under the conditioning authority in Section 11322, which doesn't implicate the need to find anticompetitive effects under Section 11324(d)(1) or the possible weighing of the public interest factors set out in Section 11324(d)(2).

To say that this issue relating to the STB's conditioning authority was raised in an untimely manner is an understatement. The issue was never raised by any party, including CP, in comments or briefs and is therefore not the proper subject of analysis in this proceeding. Parties

should not be entitled to ambush Applicants at a post-briefing hearing with new legal issues that have never been raised in the pleadings. But because the parties have agreed for the Board to impose the terms of our settlement agreement as conditions to the Board's approval of the Transactions, the Board need not determine whether its conditioning authority under Section 11322 is greater than under Section 11324(d).

In any event, CP's argument is misplaced. The Transactions do not present a "pooling" arrangement under Section 11322. CSXT is seeking authority from the STB to acquire a one-half equity interest in an independent railroad: PAS. This acquisition is a control transaction subject to Sections 11323-25 and associated regulations, not a pooling arrangement subject to Section 11322. CSXT is not proposing to "pool" CSXT's revenues or traffic with NSR, but instead to own part of an independent rail carrier that has been authorized by the STB to provide common carrier service in its own account. The revenues and traffic at issue in this proceeding are those of PAS, not of CSXT or NSR.

Pooling has traditionally involved contractual arrangements potentially affecting competition that would not otherwise fall within the STB's approval authority for control transactions. Indeed, pooling occurs when independent carriers agree, by contract, to pool the revenues they earn or the traffic they carry as independent rail carriers.² Unlike such contractual

² For this reason, the Alliance Agreement in *Canadian Nat'l Ry. Co.—Control—Ill. Cent. Corp.*, 4 S.T.B. 122, 151-52 (1999), a contractual arrangement among three rail carriers, each providing service as an independent carrier, was the subject of scrutiny under the pooling statute, although the STB ultimately concluded that it was not a pooling arrangement. *See also Kennedy v. Long Island R. Co.*, 211 F.Supp. 478, 489 (S.D.N.Y. 1962) ("The legislative history of this provision of the Interstate Commerce Act leaves no doubt that its purpose and need was to prohibit a well-defined type of anti-competitive arrangement, which had become widespread in the railroad industry. The evil had been found in arrangements between railroads to suspend competition by apportioning the business and dividing the pooled earnings in fixed percentages. That this was the purpose of the section is quite evident and has been noted in numerous decisions, both of the Courts and the Commission.") (citing *United States v. Trans-Missouri Freight Assn.*, 166 U.S. 290 (1897); *Norfolk S. Bus Corp. v. Va. Dare Transp. Co.*, 159 F.2d 306 (4th Cir. 1947); *Atlantic Greyhound Corp. Pooling*, 37 M.C.C. 543 (1941)).

arrangements potentially subject to Section 11322, the authority to control another rail carrier and any appropriate conditions related to the approval of such control are subject to Sections 11323-25 and related regulations.³

It is also unnecessary for the STB to address the pooling issue. The pooling statute calls for an analysis of competitive effects, which is the same focus of the STB's review of a significant transaction under Section 11324(d). Because the STB already fully evaluates competitive effects in connection with the acquisition of control, it would be unnecessary to do so again, even if a pooling arrangement actually existed.⁴

B. Amtrak

At the hearing, Amtrak noted that it was pleased with CSXT's acceptance of nearly all of its requested conditions, but Amtrak asked whether CSXT's commitments extended to PAS. CSXT indicated at the hearing that it could only make commitments on its own behalf related to CSXT and the PAR System, but that CSXT would confer with NSR, the half-owner of PAS. In response, NSR has reached out to Amtrak and offered to engage in good faith negotiations to consider the application of the conditions to PAS. In any event, various agreements are already in place between Amtrak and PAS, and the Transactions will have no effect on PAS's commitments under those agreements.

³ The STB is well aware that there are numerous rail carriers authorized to provide common carrier service on their own behalf that are owned by more than one railroad. Those are not pooling arrangements, and the acquisition of ownership or control in such carriers is subject to the STB's control rules. For example, when a subsidiary of CP, the Soo Line Railroad Company, sought to acquire an interest in the Indiana Harbor Belt Railroad, a rail carrier owned by other railroads, the transaction was not treated as a pooling arrangement, but as part of a control transaction. *See Chi., Milwaukee, St. Paul & Pac. R.R. Co.—Reorganization—Acquis. By Grand Trunk Corp.*, 2 I.C.C.2d 161 (1984).

⁴ In the Conrail transaction, the possible existence of a pooling arrangement was timely raised, but the STB did not find it necessary to evaluate or determine whether there was, in fact, a pooling arrangement at issue. Having concluded that the Conrail transaction did not raise competitive concerns, the STB simply stated that if there was a pooling arrangement involved, it would be approved. *See CSX Corp.—Control and Operating Leases/Agreements—Conrail Inc.*, 3 S.T.B. 196, 387 (1998).

With respect to the Berkshire Flyer service, CSXT wants to reiterate that introduction of the Berkshire Flyer service desired by Amtrak is simply unrelated to the transactions at issue here. Nevertheless, CSXT clarified at the hearing that it would agree to the operation of the Special Train service in 2022 under the terms specified in CSXT/PAR-51 (filed January 12, 2022), and that the station track referenced in that filing was not required for that 2022 service. Since the hearing, CSXT has exchanged further communications with Amtrak, and has indicated to Amtrak that CSXT will also agree to operation of the Berkshire Flyer service in 2023 as a Special Train under the same terms specified in CSXT/PAR-51, and without the need for the station track. *See* Exhibit B.

C. The Commonwealth of Massachusetts

As explained in more detail in Applicants' Response Comments and Final Brief, the Transactions will have no effect on most of the conditions requested by the Commonwealth. Nevertheless, CSXT reached out to the Commonwealth after the hearing for further discussion. While we have not reached an agreement, CSXT is willing to agree to the following conditions to the Board's approval of the Merger Transaction, and NSR and B&E (as the contract operator for PAS) have indicated to CSXT that they will make the commitments specified below to the extent applicable to the PAS lines.

- **Commonwealth Condition No. 1:** CSXT commits to maintain dispatching for any Commonwealth-owned lines currently dispatched by Springfield Terminal on behalf of the PAR System at the joint MBTA/Pan Am dispatching center under construction at the Iron Horse facility in Billerica, Massachusetts (the "Billerica Dispatch Center"), indefinitely. Further, CSXT, NSR, and B&E commit to maintain dispatching for any Commonwealth-owned lines currently dispatched by Springfield Terminal on behalf of PAS at the Billerica Dispatch Center until such a time that the parties may mutually agree on new dispatching arrangements.
- **Commonwealth Condition No. 2:** CSXT, NSR, and B&E commit to permit the Commonwealth to address any of its potential capacity concerns on the MBTA/PAS line segment between Ayer (MP-36.0) and Willows (MP-33.7), through participation in good faith discussion and/or development of plans, as

needed, to alleviate potential impacts on passenger service, including, but not limited to, reviewing the feasibility of using public funding to construct additional tracks paralleling the MBTA tracks on this segment.

- **Commonwealth Condition Nos. 3 and 4:** With respect to any Commonwealth-owned railroad facilities currently maintained by Springfield Terminal on behalf of PAS, CSXT and NSR commit to cause PAS to comply with all commitments in agreements currently in place between the Commonwealth and PAS, including those regarding maintenance activities. CSXT makes the same commitment with respect to any Commonwealth-owned railroad facilities currently maintained by Springfield Terminal on behalf of the PAR System under any agreements between the Commonwealth and a PAR Railroad.
- **Commonwealth Condition No. 5:** CSXT and NSR commit to good faith exploration and study of additional expanded passenger service in Western Massachusetts. Such good faith exploration and study efforts include a PAS-conducted RTC study, funded by MassDOT, to determine the reasonable and necessary infrastructure for sustaining fluidity of the freight and current passenger service as it may be affected by the introduction of new MassDOT-specified passenger operations on the PAS main line west of Ayer, as well as the potential introduction of such service on mutually acceptable terms. CSXT also commits to explore the introduction of additional expanded passenger service in Western Massachusetts under the governance and operations framework described in MassDOT's Intercity Rail Governance White Paper and on mutually acceptable terms, including, but not limited to, the proposed passenger service identified in MassDOT's East West Rail Study over the former Boston & Albany main line.
- **Commonwealth Condition No. 7:** CSXT, NSR, and B&E agree to discuss in good faith the continued development of a Springfield Master Plan for publicly financed capital investment, as may be appropriate, to enhance North-South, East-West and multidirectional passenger services in and around Springfield Union Station, including, but not limited to, passenger layover facility(ies), additional tracks and platform access, and expanded interlockings.

II. Follow-Up From Hearing

A. Passenger Rail Conditions

There was discussion at the hearing about the Board's authority to impose conditions related to passenger service under Section 11324. Because CSXT, NSR, and B&E have made the commitments specified above and in earlier filings, the Board need not exercise any purported conditioning authority to impose any additional conditions relating to passenger service or reach the issue of whether passenger rail conditions are authorized under the statute. While the STB

does not need to reach the issue of their conditioning power related to passenger rail, it is important to note that we do not believe that the STB has authority under Section 11324 to impose passenger-related conditions in non-major transactions such as this one.

The Board has previously refused to grant passenger-related conditions in a significant transaction because the “alleged harm does not relate to competition, the major focus of our section 11324(d) analysis.” *Canadian Pac. Ry. Co.—Control—Dakota, Minn. & E. R.R. Corp.*, FD 35081, slip op. at 15 (STB served Sept. 30, 2008). The Board has also noted that “the ICC, shortly after passage of the Staggers Act, concluded that its substantive, transportation-related review in [non-major] cases should focus only on the ‘significant anticompetitive effects’ standard in the statute.” *Can. Nat’l Ry. Co.—Control—EJ&E W. Co. (CN/EJ&E)*, FD 35087, slip op. at 31 (STB served Dec. 28, 2008) (citing *Norfolk & W. Ry. Co.—Pur.—Ill. Term. R. Co.*, 363 I.C.C. 882 (1981), *aff’d sub nom. Ill. Commerce Comm’n. v. ICC*, 687 F.2d 1047 (7th Cir. 1982)).

While the Board has found that it can impose environmental conditions in non-major transactions, the agency has noted that this power “stems from the special status of environmental protection under a separate legislative mandate.” *CN/EJ&E*, FD 35087, slip op. at 32. The Board also described such environmental conditions as a “clear demarcation,” “distinct from conditions relating to traditional public interest factors.” *Id.* In the case of passenger-related conditions, no similar legislative mandate exists that would allow the Board to impose such conditions that are entirely unrelated to the Board’s “significant anticompetitive effects” standard.

B. PAS Fiduciary Issue

There was also some discussion at the hearing regarding CSXT’s representation that it would be bound by fiduciary duties in respect to its participation in PAS. Chairman Oberman

correctly referred to the limitation on the application of Delaware fiduciary duties law under the LLC Agreement negotiated by Pan Am and NSR in 2009 and the fact that the amended PAS LLC Agreement submitted by Applicants (*see* CSXT/PAR-14, filed July 20, 2021) does not amend the relevant provision.

However, it should be noted that such limitations among members of a joint venture are common and that the implied covenant of good faith and fair dealing remains an obligation of the owner representatives on the PAS board, both as a matter of the LLC Agreement and Delaware Law. Nothing in the Delaware statute, which merely allows the limitation of fiduciary duties, nor in the LLC Agreement itself, prohibits the CSXT or NSR representatives from exercising their respective duties in the best interest of PAS. Additionally, CSXT, NSR, and B&E have entered into a series of agreements intended to maintain and improve the viability of PAS, and CSXT has made a number of commitments in those agreements which are intended to ensure PAS's long-term success. These agreements are enforceable in their own right and, as appropriate, as a condition imposed as a result of the Board's approval of the Transactions.

III. Late-Filed Comments

A number of parties have filed comments since the January 3, 2022 deadline for final briefs. These include the Village of Altamont, Albert Bros., United States Senators Blumenthal and Murphy, and the Town of West Springfield. These comments are all untimely, but CSXT will work with all of these commenters in good faith to seek to address their concerns. To the extent that these comments involve PAS, NSR and B&E (as the contract operator for PAS) have authorized us to say that they will do the same.

The Village of Altamont raises issues similar to those submitted by the Altamont Free Library earlier in this proceeding. The Applicants' Response Comments at CSXT/PAR-37-102 to CSXT/PAR-37-104 explains why the Board should not impose any conditions related to these

concerns. In addition, CSXT and NSR have already reached out to the Village to address their letter. CSXT and NSR had an initial meeting with the mayor yesterday, January 20, 2022, and plan to continue to coordinate with the Village as NSR progresses its plans to operate its intermodal train pair on the existing NSR line that runs through the Village.

Albert Bros. and Senators Blumenthal and Murphy appear to misunderstand the effect of the Transactions. PAS operates in the state of Connecticut, and Applicants have explained that the Transactions will have no adverse effect on PAS operations or maintenance. PAS was, is, and will remain a rail carrier subject to the jurisdiction of the Board and with an independent common carrier obligation. Indeed, although the ownership of PAS will change, the real effect is that PAS customers will benefit from the replacement of Springfield Terminal with B&E as contract operator of the PAS lines.

The Town of West Springfield raises concerns about pre-existing issues on which the Transaction will have no significant effect. There are currently approximately 11.4 freight trains per day that operate on the CSXT Berkshire Subdivision, which runs through West Springfield. *See Revised Appl., Ex. 13, Operating Plan at APP-314.* The Transactions will result in one additional NSR train pair per day operating through, but not stopping in, West Springfield. CSXT has met repeatedly with West Springfield stakeholders and worked in good faith to address their issues. Many commenters and hearing participants, including Rick Sullivan, Tim Murray, and Senator Hinds, have attested to CSXT's positive role in the Western Massachusetts community. CSXT is willing to continue to engage in good faith discussions with West Springfield to address their concerns.

With respect to the Allied Rail Unions' filing, received this afternoon, CSXT offers the following, and NSR and B&E (as the contract operator for PAS) have authorized CSXT to say

the following: As to the first condition related to the workforce, CSXT has offered to provide an offer to the Springfield Terminal employees not offered a position by B&E or Springfield Terminal after the workforce has been divided. The applicant parties are unwilling to go any further. As to the second condition related to capital work, CSXT and NSR have reserved the right to perform that work as a matter of first priority. The PAS operator (B&E or a later operator) will have second priority to perform that work, and a PAS contractor would have third priority. Any change to this flexibility related to the scope of work established for PAS' selected operator is unwarranted and contrary to the agreed upon Operating Agreement and GWI Term Sheet Agreement. Moreover, affected employees will be fully protected through the agreed upon application of *New York Dock* protective conditions.

IV. Conclusion

In conclusion, the Transactions have substantial public support in New England, as evidenced by the hearing testimony and many letters received from shippers, community interests and local, state, and federal officials and legislators. This support reflects broad recognition that the Transactions as structured – which include the many commitments we have made and settlements we have reached with stakeholders – will enhance competition while strengthening the rail network in the region. The public benefits of the Transactions include:

- Infrastructure. CSXT will invest more than \$100 million in infrastructure improvements on the PAR System over the next three years with \$50 million of that coming in the first year if the transaction is approved in accordance with the current procedural schedule.
- Service and extended market reach. New seamless single-line service will provide shippers with low-cost environmentally friendly rail service with truck-like reliability. PAR System shippers will more effectively reach a wider customer base over an expanded territory. They will benefit from CSXT's superior customer service, greater schedule reliability, and greater transparency. They will be able to leverage our customer facing technology, including our innovative trip plan performance tool,

which allows customers to see detailed delivery performance data on every container and railcar they ship.

- People. As stated at the hearing, all Springfield Terminal employees will receive an offer of employment. This includes Springfield Terminal employees who work on the PAS lines but don't end up receiving an offer from B&E or Springfield Terminal after the workforce has been divided – those remaining employees will receive an offer from CSXT. In addition, the applicants have offered the maximum labor protection under the Board's rules as an additional layer of protection. The applicants have worked hard to provide this tremendous package to the rail workers at Pan Am and Pan Am Southern, and CSXT is pleased to play its part in providing it.
- Passenger. CSXT has shown its broad experience working with passenger services and the ability to coordinate freight and passenger operations to ensure safe and consistent service. CSXT is partners with several local and regional passenger agencies across its network, and CSXT has appreciated NNEPRA's support of this transaction during the regulatory process. Nothing about this transaction will have a negative effect on existing passenger service, and the operating and safety enhancements are expected to improve existing passenger rail service. CSXT has pledged to work with passenger agencies to explore future opportunities, and our willingness to host the Berkshire Flyer (a route that is entirely outside of the Pan Am network) is yet another recent example of CSXT's willingness to work with passenger interests.
- Environment. Through the adoption of new technology, CSXT has set records for fuel efficiency and exceeded its emissions reduction targets. The opportunities with this transaction to take trucks off the highway and relieve highway congestion should ultimately bring meaningful reductions to the region's carbon footprint. CSXT will use newer, higher horsepower locomotives to operate the Pan Am network with a more reliable and fuel-efficient fleet, significantly reducing fuel consumption.

With the close of this record, CSXT has appreciated the opportunity to illustrate how the transaction as structured clearly meets the legal standard for approval, but even more importantly, how it will revitalize rail service in New England. Upon your approval, CSXT will get to work on revitalizing the New England rail network.

Respectfully submitted,

/s/ Anthony J. LaRocca

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*Attorneys for CSX Corporation and
CSX Transportation, Inc.*

Dated: January 21, 2022

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this __21__ day of January, 2022

Between:

CANADIAN PACIFIC RAILWAY LIMITED

- and -

**CSX TRANSPORTATION, INC.; PAN AM SOUTHERN LLC; NORFOLK SOUTHERN RAILWAY COMPANY;
AND GENESEE & WYOMING INC.**

WHEREAS CSX Corporation and CSX Transportation, Inc. (collectively “CSX”) are seeking in Finance Docket No. 36472 a decision of the Surface Transportation Board (“Board”) approving CSX’s proposed control of Pan Am Systems, Inc., Pan Am Railways, Inc. and its affiliates and subsidiaries (collectively “Pan Am”), including Pan Am’s interest in Applicant Pan Am Southern LLC (“PAS”) along with certain related transactions involving Norfolk Southern Railway Company (“NS”) and Genesee & Wyoming Inc. (“G&W”), which such transaction is hereinafter referred to collectively as the “CSX/Pan Am Transaction”;

WHEREAS CP has participated in Finance Docket No. 36472 and seeks certain conditions on the CSX/Pan Am Transaction; and

WHEREAS CP, CSX, PAS, NS and G&W agree to the following terms and conditions to maintain the incentives that exist today for PAS to remain a competitively viable route for traffic to/from New England (between upstate New York and Boston and between Vermont and Connecticut), for the benefit of shippers and the public interest.

IN CONSIDERATION of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally binding, the parties agree as follows:

1. Commitments Respecting the CSX/Pan Am Transaction

- 1.1.** CSX, both on its own behalf and (contingent upon CSX’s consummation of the CSX/Pan Am Transaction) as the parent of Boston and Maine Corporation as a joint owner of PAS, and NS, both on its own behalf and as the joint owner of PAS, and PAS agree that they (along with G&W as the current designated operator of PAS, or any future designated operator of PAS, to which the obligations of this Settlement Agreement shall be assigned) will, and will cause PAS, for so long as CSX holds any interest in PAS, directly or indirectly, as owner, joint venture, or in any capacity or manner whatsoever to perform the following:

- (a) Keep the Mechanicville gateway open to interline service with CP by maintaining efficient interchange operations at Mechanicville and by offering commercially reasonable rates and terms capable of supporting the continued movement of traffic via the Mechanicville gateway. This open gateway commitment applies to all traffic to/from PAS as well as traffic moving via PAS to/from the lines of Pan Am Railway ("PAR") being acquired by CSX, including routes on PAS and through PAS to an interchange with PAR.
- (b) 
- (c) Discharge all commitments and representations made to the Surface Transportation Board in Finance Docket No. 36472 in relation to maintaining the competitive viability of the PAS or otherwise to mitigating any adverse competitive impacts of the Related Transaction, as that term is defined in Finance Docket No. 36472, including to (1) comply with the commitments to strengthen PAS as an independent rail route access, (2) setting non-discriminatory rates to all rail carriers, which shall be at least consistent with the B&E operating agreement submitted to the STB or better, and (3) substantially enhance competition by improving access to New England. The foregoing is not intended to include pre-existing haulage rates provided to NS or extend the benefits set forth in the VRS settlement agreement to CP.
- (d) At all times, irrespective of CSX's, or any of its affiliate's, interest in PAS, all parties involved in the Transaction and Related Transactions, as those terms are defined in Finance Docket No. 36472 shall discharge all commitments and representations made to the Surface Transportation Board in said proceeding, including the commitments to maintain the competitive viability of the relevant route and that the Transaction and Related Transactions do not ultimately undermine these routes as competitive option.

2. Enforcement of the Settlement Agreement

2.1. In exchange for the commitments in (a), limited temporally as described therein, which the parties hereto will seek to have imposed as conditions of the Board's approval of the CSX/Pan Am Transaction, CP will withdraw its request for conditions in Finance Docket No. 36472 and will support approval of the Transaction as so conditioned. Additionally, the parties hereto will also seek to have the Surface Transportation Board confirm that it has and will have jurisdiction to enforce this agreement as a condition of the Transaction and Related Transactions. The commitments in (a) shall be binding as against CSX, NS and PAS whether or not imposed as conditions.

2.2. The parties agree that disputes arising under this agreement may be arbitrated between the parties or brought to the Board, as the discretion of the party seeking to enforce this agreement, provided, however, that regardless of the dispute resolution forum chosen, the remedies available to the parties do not include the award of damages, whether direct, consequential or special.

3. Assignment: This Settlement Agreement is not assignable by any of the parties without the prior written consent of each of CSX, NS, and CP which consent may be withheld at each of the said party's sole discretion. Any purported assignment by any party of any of its rights, duties, or obligations under this Agreement without said written consent shall be voidable by any of the other parties at its option, and such purported assignment shall not in any event release the purported assignee from its duties and obligations under this Agreement.

4. Binding Effect. This Settlement Agreement shall be binding upon and inure to the benefit of each of the parties, its subsidiaries and affiliates and their respective successors and permitted assigns. No changes or modifications to the terms or obligations hereunder shall be valid unless in writing and signed by all parties.

5. Entire Agreement: This Settlement Agreement constitutes the entire agreement of the parties concerning its subject matter and no other proposals, representations, warranties or other documents or agreements, either oral or written, shall be binding upon the parties. Notwithstanding the foregoing, the parties shall undertake to execute any agreement and take all other actions necessary to give effect to this Agreement.

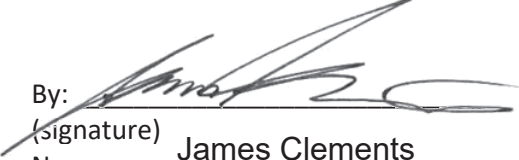
6. Governing Law: This Settlement Agreement shall be governed by and interpreted in accordance with the laws of the State of New York and applicable federal laws, excluding any conflict of laws rules that may apply therein.

[Execution Page to Follow]

- 7. Counterparts:** The parties may execute this Settlement Agreement by facsimile or other electronic means and in separate counterparts each of which when so executed and delivered shall be an original, and all such counterparts taken together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date first written above, by their respective duly authorized representatives.

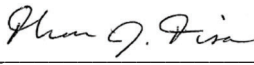
CANADIAN PACIFIC RAILWAY LIMITED

By: 
(signature)
Name: James Clements
(print name)
Title: Senior Vice-President,
(print title) Strategic Planning and
Technology Transformation

PAN AM SOUTHERN LLC

By: _____
(signature)
Name: _____
(print name)
Title: _____
(print title)

CSX TRANSPORTATION, INC., a Virginia corporation

By: 
(signature)
Name: Thomas J. Tisa
(print name)
Title: Head of Business Development
(print title)

GENESEE & WYOMING INC., a Delaware corporation

By: 
(signature)
Name: Matthew O. Walsh
(print name)
Title: Executive Vice President, Corp. Dev.
(print title)

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation

By: 
(signature)
Name: Michael R. McClellan
(print name)
Title: Vice President
(print title)

EXHIBIT B



3019 Warrington Street J500
Jacksonville, FL 32254
Office (904) 359-3568
Email Andy_Daly@csx.com

January 21, 2022

Mr. Jim Blair
Senior Director - Host Railroads National
Railroad Passenger Corporation 30th Street
Station, 4 Floor North
Box 20
Philadelphia, PA 19104

RE: Berkshire Flyer

Dear Jim,

Thank you for your January 18 letter. We understand that it may be difficult for Amtrak to operate for more than a half-dozen weekends in 2022 due to the impact of COVID on your operations. CSX is agreeable to accommodate the operation of the Berkshire Flyer from Memorial Day to Columbus Day 2022 and 2023 as a Special Train under the Operating Agreement between CSX and Amtrak. The service will operate using the attached schedule.

If Amtrak plans to operate the service beyond 2023, CSX and Amtrak will work cooperatively to assess the need for additional infrastructure including a station siding in Pittsfield, MA.

If you are in agreement with this proposal, please sign below and return a copy to me.

Kind regards,

Andy Daly
Senior Director, Passenger Operations

Approved:

Name: Jim Blair

Title: AVP Host Railroads

Date: January 21, 2022

REDACTED - TO BE PLACED ON PUBLIC FILE

Berkshire Flyer Westbound						
Train Number				235	10235	20244
Normal Days of Operation				Daily	Fr	Su
Station	Mile					
New York Penn, NY	0	ET	Dp	3:16 PM		
Yonkers , NY	15	ET	Dp	3:39 PM		
Croton-Harmon, NY	33	ET	Dp	3:58 PM		
Poughkeepsie, NY	74	ET	Dp	4:40 PM		
Rhinecliff, NY	89	ET	Dp	4:55 PM		
Hudson, NY	115	ET	Dp	5:15 PM		
Albany-Rensselaer, NY	142	ET	Dp	5:45 PM		
Albany-Rensselaer, NY	142	ET	Dp		6:05 PM	1:30 PM
Pittsfield, MA	190	ET	Ar		7:12 PM	2:40 PM

Berkshire Flyer Eastbound						
Train Number				244	10244	20235
Normal Days of Operation				Daily	Su	Fr
Station	Mile					
Pittsfield, MA	0	ET	Dp		3:00 PM	7:27 PM
Albany-Rensselaer, NY	48	ET	Ar		4:10 PM	8:41 PM
Albany-Rensselaer, NY	48	ET	Dp	4:30 PM		
Hudson, NY	75	ET	Dp	4:52 PM		
Rhinecliff, NY	101	ET	Dp	5:14 PM		
Poughkeepsie, NY	116	ET	Dp	5:30 PM		
Croton-Harmon, NY	157	ET	Dp	6:10 PM		
Yonkers , NY	175	ET	Dp			
New York Penn, NY	190	ET	Ar	7:05 PM		

CERTIFICATE OF SERVICE

I hereby certify that I have caused this CSXT's Response to Public Hearing 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.*

January 21, 2022