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August 27, 2021

VIA E-FILING

PUBLIC VERSION

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E. Street, S.W., Room 1034
Washington, D.C. 20024

Re: 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:

We represent National Railroad Passenger Corporation (“Amtrak”) in the above-referenced proceeding.

Enclosed for e-filing is a public version of Amtrak’s Comments in Opposition to the Proposed Transaction, with appropriate redactions that the Board can place in its docket. We are concurrently filing a confidential version of the Comments in Opposition to the Proposed Transaction to be filed under seal.

REDACTED - TO BE PLACED ON PUBLIC FILE

Thank you for your attention to this matter. Should you have any questions, please contact the undersigned.

Respectfully submitted,

/s/ Sophia Ree

Sophia Ree

Enclosure

cc: 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

**NATIONAL RAILROAD PASSENGER CORPORATION'S
COMMENTS IN OPPOSITION TO THE PROPOSED TRANSACTION**

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	2
II. DISCUSSION	2
A. The Board May Impose Conditions to Approval of the Proposed Transaction that are Necessary to Protect the Public Interest in Passenger Rail.....	2
B. The Importance of Passenger Rail on the Affected Rail Lines and the Extraordinary Level of Public Investment in Those Lines Require Close Scrutiny of the Effect on the Public Interest of the Proposed Transaction.	5
C. Prior Mergers Approved Without Conditions have had Significant Adverse Impacts on Passenger Rail, and CSXT’s Assurances in this Proceeding Do Not Address Those Likely Impacts.....	9
1. <i>CSXT Lease to Buckingham Branch</i>	10
2. <i>CSXT and NS Acquisition of Conrail</i>	11
3. <i>Canadian National Acquisition of Illinois Centra</i>	11
4. <i>Union Pacific Acquisition of Southern Pacific</i>	12
D. The Proposed Transaction Will Not Be In The Public Interest Without Conditions Assuring That Passenger Rail Investments and Interests Are Adequately Protected.....	14
i. <i>CSXT Has Vigorously Opposed the Expansion of Passenger Rail Service.</i>	15
ii. <i>CSXT has not demonstrated a commitment to meeting its statutory obligation to provide Amtrak trains on its rail lines with preference over freight transportation, as mandated by § 24308(f).</i>	19
III. ANY BOARD APPROVAL OF THE PROPOSED TRANSACTION SHOULD BE APPROPRIATELY CONDITIONED TO ASSURE THAT THE PUBLIC INTEREST IS FURTHERED, NOT ADVERSELY AFFECTED, BY THE PROPOSED TRANSACTION.	21
IV. CONCLUSION.....	22

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

**NATIONAL RAILROAD PASSENGER CORPORATION'S
COMMENTS IN OPPOSITION TO THE PROPOSED TRANSACTION**

In accordance with Decision No. 4 in this proceeding, the National Railroad Passenger Corporation (“Amtrak”) hereby submits its comments and request for mitigating conditions in connection with the Application by CSX Corporation and CSX Transportation, Inc. (collectively, “CSXT”) for authority to acquire control of 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 (collectively, “Pan Am”) (hereinafter, the “Proposed Transaction”). Amtrak submits that Board approval of the Proposed Transaction should be conditioned as discussed below.

I. INTRODUCTION

The Proposed Transaction is unique for railroad mergers because it is the first time the Board is being asked to approve a merger in which passenger trains account for the majority of trains operating on many of the involved rail lines. In addition, it is the first application to be considered after the Executive Order was issued by the Biden-Harris Administration encouraging the Board to “ensure that passenger rail service is not subject to unwarranted delays and interruptions in service” due to actions of host railroads and specifically to consider whether a merger “is consistent with the public interest under 49 U.S.C. 11323-25 [and with] a carrier’s fulfillment of its responsibilities under 49 U.S.C. 24308 . . .” In furtherance of this Executive Order, Amtrak’s statutory rights, the interests of millions of present and future Amtrak passengers, and the hundreds of millions of dollars in public funds that have been invested in these rail lines, primarily to improve passenger service and expand it, this Board should impose the conditions set forth below in any order approving the Proposed Transaction.

II. DISCUSSION

A. The Board May Impose Conditions to Approval of the Proposed Transaction that are Necessary to Protect the Public Interest in Passenger Rail.

Since the Proposed Transaction does not involve the merger or control of two or more Class I railroads, it is governed by 49 U.S.C. § 11324(d). Under that standard,

the Board’s primary focus is on the anticipated competitive effects. The Board must approve the application unless there would be adverse competitive impacts that are both ‘likely’ and ‘substantial.’ And, even if the Board were to find that there would be likely and substantial anticompetitive impacts, the Board may not disapprove the transaction unless the anticompetitive impacts outweigh the benefits and cannot be mitigated through conditions.”¹

¹ See *Soo Line Corporation—Control—Central Maine & Quebec Railway US Inc.*, STB Finance Docket No. FD 36368, at 4 (STB served May 4, 2020); *accord Mass. Coastal R.R., LLC—Acquisition—CSX Transp., Inc.*, STB Finance Docket No. 35314, at 6 (STB served March 29, 2010).

That standard, however, does not end the inquiry. 49 U.S.C. § 11324(c) provides that the Board “shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest,” and that the Board “may impose conditions governing the transaction.”² In *Village of Barrington v. Surface Transp. Bd.*, the court upheld a Board decision to impose environmental conditions on a proposed acquisition by Canadian National (a Class I railroad) of the EJ&E Railway Company (a non-Class I railroad), a transaction that would not cause anticompetitive effects that were outweighed by the public interest.³ The Board imposed environmental conditions that were “unrelated to competition concerns” to “mitigate the effects of the transaction,” finding the authority to do so in section 11324(c), which states that the Board “may impose conditions governing the transaction....”⁴ On review, the court rejected CN’s argument that the Board was prohibited from imposing conditions other than those related to competition. It held that the Board acted reasonably in interpreting subsection (c) to apply to all proposed merger transactions, whether major or minor⁵, finding that subsection (c) was the source of the ICC’s “extraordinarily broad conditioning authority” and had not been altered when the statute was amended by adding subsection (d)⁶; and that the Board’s interpretation “leaves both the Board’s approval and conditioning authority constrained by subsection (c)’s broad ‘public interest’ standard.”⁷ In fact, the “Board has issued numerous decisions over many years imposing conditions under 49 U.S.C. § 11324(c) to mitigate various concerns and protect the public interest

² 49 U.S.C. § 11324(c).

³ *Village of Barrington, Ill. v. Surface Transp. Bd., et al.*, 636 F.3d 650, 653 (D.C. Cir. 2011).

⁴ *Ibid.* at 654.

⁵ *Ibid.* at 661.

⁶ *Ibid.* at 661-62.

⁷ *Ibid.* at 664.

broadly.”⁸ Thus the Board has the authority to impose conditions in the Proposed Transaction, and the recent Executive Order regarding proposed mergers and passenger rail further supports the conditions Amtrak seeks.

On July 9, 2021, the Biden-Harris Administration (the “Administration”) issued Executive Order EO 14036 (“Executive Order”).⁹ In it, the Administration recognized that a “fair, open, and competitive marketplace has long been a cornerstone of the American economy, and the welfare of workers, farmers, small businesses, startups, and consumers.”¹⁰ In support of that pro-competitive policy, the Executive Order focused on two core issues relating to passenger rail that were intended to “further competition in the rail industry”:

- First, the Executive Order encouraged the Chair of the Board, working with the rest of the Board, “to ensure that passenger rail service is not subject to unwarranted delays and interruptions in service due to host railroads’ failure to comply with the required preference for passenger rail.”¹¹
- Second, the Executive Order encouraged the Chair of the Board, working with the rest of the Board, to “consider a carrier’s fulfillment of its responsibility under 49 U.S.C. 24308 (relating to Amtrak’s statutory rights)” in “determining whether a merger, acquisition, or other transaction involving rail carriers is consistent with the public interest under 49 U.S.C. 11323-25.”¹²

⁸ See *Bessemer and Lake Erie Railroad Company - Acquisition and Operation - Certain Rail Lines of CSX Transportation, Inc. in Onongada, Oswego, Jefferson, Saint Lawrence, and Franklin Counties, NY*, STB Financial Docket No. FD 36347, Decision served Feb. 25, 2021, p. 7.

⁹ Executive Order, 86 Fed. Reg. 36987.

¹⁰ *Ibid.* at 36987.

¹¹ *Ibid.* at 36996.

¹² *Ibid.*

Taken together, these authorities authorize, and indeed encourage, the Board to impose conditions on the Proposed Transaction that may not be directly related to traditional anticompetitive concerns, but that nonetheless are necessary to alleviate the adverse impacts of the Proposed Transaction on passenger rail and thereby promote the public interest.

Amtrak will first describe the public interest in passenger rail in the region affected by the Proposed Transaction. We then will discuss the adverse impacts on passenger rail that would result from the Proposed Transaction. Finally, we will set forth the conditions that should be imposed on any approval of the Proposed Transaction to alleviate those adverse impacts and in furtherance of the public interest.

B. The Importance of Passenger Rail on the Affected Rail Lines and the Extraordinary Level of Public Investment in Those Lines Require Close Scrutiny of the Effect on the Public Interest of the Proposed Transaction.

The Proposed Transaction is the first railroad merger in which passenger trains, not freight trains, account for the majority of train operations over many of the rail lines that will be impacted by the transaction. Boston area commuter rail services operated by the Massachusetts Bay Transportation Authority (“MBTA”) run over Pan Am owned or dispatched lines.¹³ The lines are also used by four Amtrak passenger services: (1) the Boston-to-Albany section of Amtrak’s New York/Boston-Chicago *Lake Shore Limited* that operates over the CSXT Worcester-to-Albany line on which NS will receive trackage rights in return for not opposing the merger; and (2) the three state-supported intercity routes Amtrak operates over Pan Am lines in partnership with Maine, Connecticut and Vermont.¹⁴

¹³ See Exhibit A, Verified Statement of Mr. Richard G. Slattery dated August 26, 2021 (“Slattery V.S.”), p. 3.

¹⁴ See Slattery V.S., p. 3.

Notably, none of the four Amtrak services existed when Amtrak began operation 50 years ago. The financial distress of New England's railroads in the 1960s led them to seek, and the Interstate Commerce Commission to grant, authority to discontinue all of Northern New England's once extensive intercity passenger rail service. The last remnant – a one-car train between Boston and Albany – ceased operation just before Amtrak initiated service on May 1, 1971.¹⁵ As a result, Amtrak, its state partners and the federal government have spent the last half-century restoring, improving, and investing in Northern New England's intercity passenger rail service, many of which operate in areas with limited alternative transportation options. Specifically:

- On May 17, 1971 Amtrak began operating its first state-supported service, funded in part by the Commonwealth of Massachusetts, the Boston-Springfield-New York City *Bay State*, which operated between Worcester and Springfield over what is now CSXT's Worcester-Albany line.¹⁶
- In 1972, Amtrak restored service over what is today the Springfield-to-St. Albans, Vermont route of the *Vermont*, which Amtrak operates in partnership with Vermont, Massachusetts and Connecticut. The *Vermont* travels in part over the now Massachusetts Department of Transportation ("MassDOT")-owned "Knowledge Corridor" line operated and maintained by Pan Am Southern between Springfield and East Northfield, Massachusetts.¹⁷
- The 1975 initiation of the Boston-Worcester-Albany section of the *Lake Shore Limited* extended Amtrak's long-distance network to New England and brought passenger rail service back to Pittsfield, Massachusetts.¹⁸
- In 2001, the *Downeaster*, operated in partnership with Maine's Northern New England Passenger Rail Authority, restored passenger rail service between Boston and Maine, operating over what is now Pan Am between the Massachusetts/New Hampshire border and Portland. In 2012, the *Downeaster* was extended over Pan Am's line from Portland to Brunswick, Maine.¹⁹

¹⁵ See Slattery V.S., p. 3.

¹⁶ See *Ibid.*

¹⁷ See Slattery V.S., p. 4.

¹⁸ See *Ibid.*

¹⁹ See *Ibid.*

- In 2019, Amtrak and MassDOT partnered to initiate *Valley Flyer* service between Springfield and Greenfield, Massachusetts over the MassDOT-owned portion of the *Vermont* route.²⁰

Additionally, the level of public investment on the rail lines impacted by the Proposed Acquisition is unprecedented. The Association of American Railroads states on its website that “the vast majority of America’s freight railroads own, build, maintain, operate and pay for their infrastructure with little or no government assistance.”²¹ That is most definitely not the case on the Pan Am lines that CSXT seeks to acquire. Since the late 1990s, there has been an enormous investment of public money in the just over 1,000 miles of rail lines owned and/or operated by Pan Am.²² The majority of this funding was provided to support initiation or improvement of state-supported Amtrak services. The major federal and/or state-funded investments in Pan Am infrastructure during this period include:

- The approximately \$54 million, funded primarily with federal grants, that the NNEPRA paid Pan Am between 1999 and 2001 to rehabilitate Pan Am’s main line between the Massachusetts/New Hampshire border and Portland to enable initiation of Amtrak’s *Downeaster* service between Boston and Portland.²³

- A \$38.4 million federal grant in 2010, funded by the American Recovery and Investment Act of 2009 (ARRA), that paid for track, bridge, and grade crossing upgrades on Pan Am’s main line between Portland and Brunswick, Maine to facilitate extension of *Downeaster* service to Brunswick.²⁴

- [REDACTED]

25

²⁰ See *Ibid.*

²¹ www.aar.org/article/freight-rails-private-investments/

²² See Slattery V.S., p. 9.

²³ See Slattery V.S., pp. 9-10; Exhibit A-2, STB Finance Docket No. 33697, National Railroad Passenger Corporation-Petition for Declaratory Order-Weight of Rail, NRPC’s Motion for Further Clarification (April 12, 2002), Verified Statement of Michael J. Murray, pp. 3-5.

²⁴ See Slattery V.S., p. 10; https://railroads.dot.gov/sites/fra.dot.gov/files/2019-11/NE%20Fact%20Sheet_071513.pdf

²⁵ See Slattery V.S., p. 10; Exhibit A-3, Responses and Objections of 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

• [REDACTED]
[REDACTED]
[REDACTED]²⁶

• [REDACTED]
[REDACTED]

• \$110 million in public funding, provided by a \$72.8 million federal ARRA grant²⁷ and [REDACTED]
[REDACTED]²⁸ Pan Am Southern continues to operate the line, on which it retained exclusive freight service rights.²⁹

• [REDACTED]
[REDACTED]³⁰

These public investments -- totaling over [REDACTED]³¹ -- have brought benefits to passenger service in the region in the form of additional capacity and improved performance. The public interest requires imposing conditions so these investments are not squandered, protecting the investments' use for their intended purpose, rather than solely for CSXT's gain. These conditions are detailed in Section III below.

Vermont and Massachusetts Railroad Company dated June 21, 2021 and relevant portions of Exhibit A attached thereto ("Pan Am Responses").

²⁶ See Pan Am Responses.

²⁷ <https://railroads.dot.gov/passenger-rail/high-speed-rail/hsipr-funding-region> or

<http://blog.mass.gov/transportation/federal-stimulus/fed-stimulus-high-speed-rail-grant-knowledge-corridor/>

²⁸ See Pan Am Responses.

²⁹ See Slattery V.S., pp. 10-11.

³⁰ See Pan Am Responses.

³¹ This figure does not include the additional public funding Pan Am received for grade crossing improvements and to facilitate or improve access to freight shippers.

C. Prior Mergers Approved Without Conditions Have Had Significant Adverse Impacts on Passenger Rail, and CSXT’s Assurances in This Proceeding Do Not Address Those Likely Impacts.

Amtrak’s concerns about the potentially harmful impact on passenger rail as a result of the Proposed Transaction are not imaginary. In its Second Amended Application filed on July 1, 2021 (“Application”) and the Verified Statement of Mr. Andy Daly (“Daly V.S.”), CSXT offers various assurances that not only will the Proposed Transaction not harm, but will also affirmatively be a positive development for Amtrak passenger service.³² Mr. Daly, a Senior Director of Passenger Operations for CSXT, specifically states that:

... I conclude that the Proposed Transaction and Related Transactions will have no negative impact on passenger service operated on the rail lines that are affected by these proceedings. All rail users, including passenger service, will benefit from the more consistent and reliable network and the focus of a dedicated Passenger Operations team that will result from the Proposed Transaction and Related Transaction.³³

But recent merger transactions have taught that, if vague and unsupported assurances of benefits in an applicant’s proposal are not made specific and enforceable, those benefits will not materialize. While rail consolidations have been good for freight railroads and their investors, they have not been good for Amtrak and its passengers. Nor have they benefited the taxpayers who have been forced to cover the increased operating expenses and lost passenger revenues attributable to consolidation-caused delays on state-supported corridor and federally funded long distance routes, or the infrastructure maintenance costs that consolidations have shifted from profitable freight railroads to the public purse.³⁴

³² Daly V.S., pp. 4, 10-19.

³³ *Ibid.* at pp. 18-19.

³⁴ *See* Slattery V.S., pp. 8-9.

More specifically, past railroad consolidations that have been approved without enforceable conditions for the protection of passenger rail have triggered service meltdowns that produced daily, multi-hour delays to Amtrak trains for extended periods, with inevitable declines in on-time performance (“OTP”) and ridership that have often taken years to recover, if at all; while deterioration in track conditions has jeopardized the continued operation of Amtrak trains.³⁵

The following are examples of past railroad consolidations where significant negative impacts on passenger service resulted, regardless of assurances to the contrary:

1. *CSXT Lease to Buckingham Branch*

In 2004, CSXT leased an over 200-mile rail line in Virginia to Buckingham Branch Railroad, a very small, short line. Included in this lease was the 127-mile segment of the route of Amtrak’s New York-Washington-Chicago Cardinal long distance train between Orange and Clifton Forge, Virginia. The effect of the lease would be to shift maintenance responsibility to Buckingham Branch, even though unit coal and grain trains operated by CSXT would continue to operate over the line.³⁶

In the STB proceeding for approval of the lease, both Amtrak and the Commonwealth of Virginia expressed concerns about whether the line would be maintained to levels necessary for continued operation of Amtrak service. The STB rejected Amtrak’s request for a condition requiring that the line be maintained to existing levels, and Virginia’s similar request, stating that Buckingham Branch “had ample incentive to keep the track well maintained” and that “Amtrak’s and the Commonwealth’s interests will be amply protected without the conditions they seek.”³⁷

Unfortunately, Amtrak’s and Virginia’s concerns proved to be well-founded. Delays to the Cardinal due to slow orders on the segment leased to Buckingham Branch increased 38% between fiscal year 2004 (October 2003-September 2004), the last full year before the lease to Buckingham Branch, and fiscal year

³⁵ See Slattery V.S., p. 5.

³⁶ See Slattery V.S., pp. 7-8.

³⁷ See Slattery V.S., p. 8.

2006, the first full year in which Buckingham Branch was responsible for track maintenance, and increased further thereafter. Virginia subsequently began providing funding to Buckingham Branch for rail, tie, signal and tunnel work: a total of more than \$31 million to date. Had this state-funded work not been performed, suspension of Amtrak service on the Cardinal route would almost certainly have been necessary due to deteriorated track conditions.

2. *CSXT and NS Acquisition of Conrail*

Implementation of the Conrail acquisition on June 1, 1999 triggered an immediate Norfolk Southern (“NS”) service meltdown on lines NS acquired from Conrail. Amtrak trains traveling over NS’s main line between Harrisburg and Chicago encountered miles of freight trains sitting on main line tracks outside crammed yards with no room to accommodate them, resulting in single tracking that produced delays of over two hours on virtually all Amtrak routes on former Conrail lines. During the meltdown, NS directed Amtrak trains to stop at locations where they blocked grade crossings and were ticketed by local police. The NS meltdown was followed by significant deterioration in Amtrak on-time performance on CSXT, and again, Amtrak trains and passengers on affected routes experienced multi-hour delays.³⁸

3. *Canadian National Acquisition of Illinois Central*

The 1999 acquisition of Illinois Central Railroad (“IC”) by Canadian National Railway (“CN”) resulted in severe adverse impacts on passenger service on IC’s Chicago to New Orleans main line, the route of Amtrak’s *City of New Orleans* and *Illini* services.³⁹

IC, the first railroad to embrace so-called “Precision Scheduled Railroading,” had single-tracked its double track main line in the early 1990s to minimize track maintenance expenditures. Almost immediately after CN acquired the line, the formerly good on-time performance of

³⁸ See Slattery V.S., p. 6.

³⁹ See Slattery V.S., p. 7.

Amtrak trains operating on that line declined drastically.⁴⁰ On-time performance of the northbound *Illini*, the Carbondale to Chicago state-supported Amtrak train that operated throughout this period, fell from 92% in the 12-month period preceding CN's 1999 acquisition of IC to 77% in the 12-month period ending in mid-2001. It reached its nadir in 2018 when only 6% of northbound *Illini* trains arrived on time and 21% were more than an hour late on a 300-mile journey.⁴¹

4. *Union Pacific Acquisition of Southern Pacific*

The amalgamation of Southern Pacific Transportation Company by Union Pacific Railroad ("UP"), approved by the STB in 1996, triggered a rail service meltdown in the Western United States. The meltdown impacted operations for over a year; required emergency intervention by the STB; and resulted in abysmal on-time performance for Amtrak's long-distance trains operating over UP. Hardest hit was Amtrak's *Sunset Limited*, which travels over UP between Lake Charles, Louisiana and Los Angeles through the Houston area that was the epicenter of the meltdown. During one three-month period following the merger, the *Sunset Limited* was on time only once. Multi-hour delays were a daily occurrence, with devastating impacts on Amtrak passengers, ridership, and operating costs.⁴²

* * *

CSXT claims in its third Application that, despite given the above history, Amtrak services will not suffer, but will in fact benefit, from CSXT's acquisition of Pan Am. These claims are illusory.

⁴⁰ *See Ibid.*

⁴¹ *See Ibid.*; Amtrak Office of Inspector General, "Train Operations: Better Estimates Needed of the Financial Impacts of Poor On-Time Performance," OIG-A-2020-001 (October 14, 2019), pp. 11-12 (https://www.oversight.gov/sites/default/files/oig-reports/OIG-A-2020-001_OTP_mandate.pdf).

⁴² *See Slattery V.S.*, pp. 5-6.

First, CSXT claims that Amtrak services will benefit from the Proposed Transaction because “CSXT plans to install Positive Train Control (“PTC”)” on the *Downeaster* route.⁴³ But PTC installation was already planned before CSXT’s merger application, and will primarily be funded by Amtrak.⁴⁴

Second, the track upgrades CSXT claims will benefit the *Downeaster* service are not even on the *Downeaster* route. CSXT assures the Board that CSXT “plans to restore the PAR System mainline track conditions from FRA Class 1 to FRA Class 2 standards” and “upgrade the remaining PAR system freight mainline jointed rail.”⁴⁵ These promised investments, which would permit passenger trains to operate at a maximum speed of only 30 miles per hour, have nothing to do with the *Downeaster* route - they will be made in Northern Maine, where the *Downeaster* does not operate.

The portions of Pan Am’s main line where the *Downeaster* does operate – between the Massachusetts/New Hampshire border and Royal Junction, Maine (14 miles northeast of Portland) – were upgraded to FRA Class 4 standards, with jointed rail replaced by welded rail, in conjunction with the massive 1999-2001 rehabilitation project that initiated the *Downeaster*⁴⁶ and subsequent projects to extend and improve the *Downeaster* service identified above. All these projects were primarily funded by NNEPRA, using federal and state grants.⁴⁷

In fact, the real beneficiary of these track upgrades on the *Downeaster* route is CSXT. Because of the past public investments of nearly [REDACTED] on the 92-mile segment of

⁴³ Daly V.S., p. 15.

⁴⁴ See Slattery V.S., p. 11-12; CSX-NNEPRA Agreement dated Aug. 3, 2021 (filed August 5, 2021), pp. 4-5.

⁴⁵ Daly V.S., p. 14.

⁴⁶ See Slattery V.S., p. 12; STB Finance Docket No. 33697, National Railroad Passenger Corporation-Petition for Declaratory Order-Weight of Rail, Decision (served January 31, 2003).

⁴⁷ See Slattery V.S., p. 12.

Pan Am's main line over which the *Downeaster* operates,⁴⁸ CSXT will not have to make on the *Downeaster* route the expenditures it plans on other portions of the Pan Am main line to bring track conditions to the levels required for its freight services.

D. The Proposed Transaction Will Not Be In The Public Interest Without Conditions Assuring That Passenger Rail Investments and Interests Are Adequately Protected.

As discussed above, the Executive Order expressed two fundamental policies relevant to the Proposed Transaction: first, that a concentration of market power in one entity is antithetical to a healthy and equitable economy; and second, that in assessing proposed mergers, the interests of passenger rail service as expressed in 49 USC § 24308 – and the statutory rights granted to Amtrak under that provision – should be taken into account.⁴⁹ Indeed, the Administration has recognized that concentrations of power are particularly problematic in the rail industry,⁵⁰ where in many circumstances, there is only one railroad connecting a major city pair or serving a critical passenger facility. In this instance, the Proposed Transaction will concentrate all control over all the primary rail routes in the region into the hands of one entity, and that entity has historically frustrated the passenger rail policies, and Amtrak's statutory rights embodied in § 24308. The Proposed Transaction is therefore not in the public interest, unless conditions are imposed that will ensure that passenger rail interests are not jeopardized by the concentration of control in CSXT.

Amtrak's "Amtrak Connects US" vision, issued in April 2021, contemplates new or improved Amtrak services on more than 50 rail corridors over the next 15 years, including

⁴⁸ See *Ibid.*

⁴⁹ See Executive Order, p. 36996.

⁵⁰ See *Ibid.*

Boston-Albany, Boston-Portland-Rockland, Maine and Boston-Concord, New Hampshire.⁵¹

Specifically, the *Amtrak Connects US* vision seeks to expand services in the region in cooperation with state and regional partners, including:

- 1) The introduction of up to five daily round trips between Boston, Massachusetts and Concord, New Hampshire that would operate over the affected Pan Am lines;
- 2) The introduction of up to two daily round trips between Albany, New York and Boston that would operate over CSXT's Albany to Worcester, Massachusetts line;
- 3) An increase in *Downeaster* frequencies between Boston, Massachusetts and Brunswick, Maine; and
- 4) The introduction of seasonal (summer) extensions of *Downeaster* service trains to Rockland, Maine that would operate over the affected Pan Am line.

In recent years, Pan Am has worked cooperatively with Amtrak's state partners and Amtrak to expand and improve Amtrak's state-supported services on its lines. Amtrak's passengers, the communities Amtrak serves, New England's economy and freight rail shippers have all benefited from the public investments for track upgrades and other infrastructure improvements that have accompanied the expansion of Amtrak's services.

i. *CSXT Has Vigorously Opposed the Expansion of Passenger Rail Service.*

In contrast, CSXT consistently has taken the approach of obstructing the expansion of passenger rail, and to limit access to its facilities, despite the fact that CSXT is statutorily required to provide Amtrak with access to its rail lines.⁵²

Indeed, as the Board is aware from the current Gulf Coast dispute,⁵³ CSXT has a history of stonewalling Amtrak's requests for additional service. Amtrak has been unsuccessful in its

⁵¹ <https://www.amtrakconnectsus.com/wp-content/uploads/2021/03/Amtrak-Connects-US-Vision-with-Map-Final.pdf>

⁵² See 49 U.S.C. § 24308(a), (d).

⁵³ See Amtrak Application.

efforts to obtain CSXT's agreement to allow Amtrak to restore service between New Orleans and Mobile.

After years of good faith negotiations, Amtrak was left with no choice but to file an application with the Board seeking an order to restore passenger service between New Orleans, Louisiana, and Mobile, Alabama on CSXT (and NS) lines.⁵⁴ The application cites the tortured history of Amtrak's attempt to secure access to the host railroads' rail lines for the purpose of restoring efficient and effective intercity passenger rail service to the people of the Gulf Coast. As expressed in a letter filed in that proceeding, in light of CSXT's obstructions, the Department of Transportation did not believe that "there [was a] clear or imminent path to the restoration of [] service absent the Board's intercession."⁵⁵

Another example of CSXT resistance to Amtrak's requests for additional service, as they have done in the Gulf Coast dispute, is CSXT's handling of Amtrak's request for additional passenger service between Albany, New York (Post Road Crossing) and Pittsfield, Massachusetts, known as the Berkshire Flyer service.⁵⁶

On July 22, 2019, Amtrak, on behalf of MassDOT, sent a formal request for a seasonal weekend extension of an Empire Service train between Albany and Pittsfield, on only Fridays and Sundays, and only for the summer season from Memorial Day through Labor Day. The proposed service included only 36.9 miles of additional Amtrak service on CSXT per one-way

⁵⁴ On August 5, 2021, the Board denied CSX's motion to dismiss finding that Amtrak's application is ripe for adjudication. *See* STB Finance Docket No. 36496, Application of the National Railroad Passenger Corporation under 49 U.S.C. § 24308(e) - CSX Transportation, Inc. and Norfolk Southern Corporation ("Amtrak Application"), Decision dated August 5, 2021.

⁵⁵ Amtrak Application, Letter from John E. Putnam, Acting General Counsel, U.S. DOT, dated May 10, 2021 ("US DOT Letter"), p. 1.

⁵⁶ *See* Exhibit B, Verified Statement of Mr. Kyle Montgomery dated August 26, 2021 ("Montgomery V.S."), p. 3.

trip, with a total of two round trips per week.⁵⁷ In response, CSXT requested a draft term sheet to facilitate an extensive (and expensive) capacity study “to initiate the joint planning process.”⁵⁸

Amtrak requested that a pilot service be run under the operating agreement’s existing “special train” provisions for the 2020 season while the study was completed.⁵⁹ CSXT responded with several conditions, the most concerning of which was CSXT’s refusal to make any commitment as to the length of the study, when it would be completed, or even when it could begin. The only commitment they could make was that they would not start the study until after the Gulf Coast study was completed, as they claimed not to have the resources to study both routes simultaneously.⁶⁰

Less than a week later, CSXT rejected Amtrak’s request for a pilot service, claiming that a twice weekly seasonal train would be unfeasible due to traffic volume and projected station dwells. Finally, CSXT made the blanket statement that it would not approve any service, temporary or otherwise, without infrastructure improvements first being completed.⁶¹ CSXT did not provide any data, analysis, or other evidence that the very limited service requested would in any way impair freight transportation on the line.

Since these discussions, CSXT, MassDOT, and Amtrak have made no substantive progress in adding the seasonal weekend extension, which Amtrak had at one time expected to commence in May 2021.⁶² Based on Amtrak’s history with CSXT and CSXT’s refusal to permit even a pilot service, it is clear that CSXT has no intention of approving the *Berkshire Flyer* service without demanding requirements wildly disproportionate to the modest addition of twice

⁵⁷ See Montgomery V.S., p. 3.

⁵⁸ See *Ibid.*

⁵⁹ See *Ibid.*

⁶⁰ See *Ibid.*

⁶¹ See Montgomery V.S., p. 4.

⁶² See Montgomery V.S., p. 4, Exhibit B-1.

weekly seasonal service initially proposed. This is in keeping with CSXT's pattern of effectively saying "no" through delay and the imposition of impossible terms. Interestingly, CSXT now claims in its Application in this proceeding that the entire Albany-Worcester line, including the short segment over which the *Berkshire Flyer* would operate on a few summer weekends, "has excess capacity," and it has agreed to allow NS to operate two daily 9,000 foot intermodal trains over the line without conducting any capacity analysis.⁶³

CSXT has also refused to cooperate with Amtrak on more mundane operational matters that should not be a source of contention. For example, in Springfield, Massachusetts, CSXT has claimed that Amtrak needed to amend the operating agreement to operate the *Valley Flyer* service over a railroad diamond near the Springfield Station, even though Valley Flyer service trains did not operate on the "Rail Lines" of CSXT, as that term is defined in the operating agreement, but rather on tracks owned by MassDOT. During this dispute, CSXT insisted that Amtrak was required to file a request for a "modification of service" and to undertake a capacity study to add service on the "Rail Lines" of CSXT, even though Amtrak trains were traveling North - South on the MassDOT line while the CSXT line goes East - West.⁶⁴

Operations for such a railroad crossing are typically governed by a joint facility agreement. Amtrak's inquiries to the predecessor railroads and former railroad joint facility managers indicated that operations over this diamond are likewise covered by such an agreement to which CSXT and MassDOT are now parties. CSXT, however, would not produce said document for Amtrak or provide any language to support its position that CSXT approval was

⁶³ Application, pp. 24-25; *See* Exhibit C, Responses and Objections of CSX Corporation and CSX Transportation, Inc. to First Set of Discovery Requests of National Railroad Passenger Corporation to CSX dated June 1, 2021 ("CSXT Response"), Interrogatory Response No. 2.

⁶⁴ *See* *Montgomery V.S.*, p. 2.

required. The suggestion that Amtrak should be required to obtain separate agreement to operate on tracks owned by another carrier over a diamond crossing is unprecedented in Amtrak's dealings with other freight partners, despite the fact that Amtrak trains cross many such diamonds around the country.⁶⁵

Based on Amtrak's experience with CSXT, Amtrak rightfully has grave concerns about CSXT being granted greater power in the region to block Amtrak's right to meaningful access to build upon the significant growth of intercity passenger rail in New England, contrary to the policy expressed in the Executive Order and the statutory requirements of 49 U.S.C. § 24308.

- ii *CSXT has not demonstrated a commitment to meeting its statutory obligation to provide Amtrak trains on its rail lines with preference over freight transportation, as mandated by § 24308(f).*

While CSXT claims that it does not expect that the Proposed Transaction will produce “(1) significant shifts in traffic flows or diversion of traffic from other rail carriers or trucks in the near term, or (2) major growth in traffic over the next three years,”⁶⁶ the NS-CSXT deal that is a component of the proposed transaction would increase freight train operations by up to 27% on the CSXT line between the Albany area and Worcester on which Amtrak's *Lake Shore Limited* service operates, and which multiple *Valley Flyer* and *Vermont* service trains cross daily.⁶⁷

The CSXT line between the Albany area and Worcester and Pan Am's lines are used by four existing Amtrak services: the Boston-to-Albany section of Amtrak's *Lake Shore Limited*,

⁶⁵ See *Montgomery V.S.*, p. 2.

⁶⁶ *Daly V.S.*, p. 4.

⁶⁷ See Application, p. 25; Operating Plan Verified by Mr. Jamie Boychuk, pp. 16, 41. In addition, CSXT has offered no details on the actions CSXT intends to take to ensure that the performance of Amtrak trains operating over CSX's Berkshire Subdivision and Boston Subdivision is not adversely impacted by the up to 27% increase in freight train operations that will result from the operation of the NS double-stack trains over those subdivisions. Instead, CSXT states that “passenger trains will continue to be the highest priority train operated on these CSXT lines.” See CSXT Response, Interrogatory Response No. 8.

which provides the only intercity passenger rail service to Worcester, New England's second largest city; and three state-supported intercity routes Amtrak operates in partnership with Maine, Massachusetts, and Vermont. The proposed merger would increase freight traffic along the CSXT line that hosts Amtrak's *Lake Shore Limited*, and in particular would reduce the availability of the line for additional intercity passenger rail service, such as the *Berkshire Flyer*, something significantly less likely had the Proposed Transaction not taken place. This could incentivize the newly combined CSXT-Pan Am entity to prioritize a now-increased amount of freight traffic, limiting Amtrak and other passenger rail providers passenger service options along the affected lines, and impacting Amtrak's on-time performance.

Significantly, CSXT admits that it has not conducted any studies or analysis to determine (i) whether any additional track capacity or other investments are required or desirable, or should be sought, in conjunction with or to accommodate the operation of the NS double-stack trains on CSXT's Berkshire Subdivision and Boston Subdivision, or (ii) whether the operation of the two daily NS double-stack Trains on CSXT's Berkshire Subdivision and Boston Subdivision will reduce the track capacity currently available for operation of additional trains over those subdivisions.⁶⁸ Instead, CSXT now claims in its Application that the entire Albany-Worcester line "has excess capacity," directly contravening the position it continues to take with regard to the proposed seasonal, weekend Berkshire Flyer service that would operate over only a small portion of the line, and claims that Amtrak operations will not be affected by operation of the NS double-stack trains because their not yet developed schedules will provide for them to operate outside of the operating windows of the *Lake Shore Limited*.⁶⁹

⁶⁸ CSXT Response, Interrogatory Response Nos. 2, 6.

⁶⁹ *Daly V.S.*, pp. 13-14.

III. ANY BOARD APPROVAL OF THE PROPOSED TRANSACTION SHOULD BE APPROPRIATELY CONDITIONED TO ASSURE THAT THE PUBLIC INTEREST IS FURTHERED, NOT ADVERSELY AFFECTED, BY THE PROPOSED TRANSACTION.

In order (i) to avoid the adverse effects caused by the Proposed Transaction which will vest concentrated power in CSXT to control the rail lines; (ii) to ensure that Amtrak can provide its passengers with on-time train service; and (iii) to fulfill the expectations of the Biden-Harris Administration's expansion and improvement of intercity passenger rail service, Amtrak respectfully requests that Board exercise its authority to impose the following conditions:

1) CSXT should be ordered to adhere to and fulfill all of the representations it has made in this proceeding regarding the effect of the Proposed Transaction on present and future Amtrak services. In particular, that the trackage rights granted to Norfolk Southern to operate a daily round trip double-stack train over CSXT between the Albany area and Ayer, Massachusetts should be modified to reflect CSXT's commitment that this train will be scheduled to operate (i) over the portion of CSXT's route between Post Road Crossing (near Albany) and Worcester outside of the operating windows during which Amtrak's Lake Shore Limited, typically operates over this line segment (currently 2pm to 8pm), and (ii) over the diamond crossing in Springfield where it crosses the route of Amtrak's Valley Flyer and Vermonter trains at times that will not conflict with those trains' typical operations.

2) CSXT should be ordered to fully cooperate in good faith with Amtrak and third party public agencies for addition, expansion or modification of existing intercity passenger rail services, operation of seasonal service or "extra sections" of existing regularly scheduled Amtrak trains, and/or development of new intercity passenger rail service, including but not limited to service over on the Pan Am routes and CSXT's Albany-Worcester route; with respect to any such request by Amtrak, all inputs and assumptions will be shared with the parties participating any analysis or modelling (if such is required), and with the Board in any subsequent proceeding, subject to appropriate confidentiality undertakings; and with respect to the Pan Am routes and CSXT's Albany-Worcester route, the level and composition of freight traffic used in any analysis or modelling (if such is required), will be no greater than the level forecast by CSXT in their Application.

3) CSXT should be ordered to cooperate with Amtrak and third party public agencies to identify improvements if any that would be required to make accelerated speeds on the Pan Am routes and CSXT's Albany-Worcester route safe and practicable, and upon agreement or an order to implement such accelerated speeds, work in good faith to make such improvements as promptly as practicable.

4) CSXT should be ordered to not make changes in operations on the Pan Am routes and/or CSXT's Albany-Worcester route, including but not limited to changes in freight traffic volumes, scheduling, infrastructure, and dispatching, that would reasonably be expected to result in the Customer On-Time Performance (Customer OTP) of Amtrak trains operating on the Pan Am routes and CSXT's Albany-Worcester route falling below the minimum standard as defined in the FRA Final Rule published November 16, 2019, and that in the event CSXT changes inadvertently result in a Amtrak train or Amtrak route falling below such minimum standard, that CSXT will be required to take such actions as may be necessary to restore the performance of such Amtrak train or Amtrak route performance to at least the minimum standard.

5) CSXT should be ordered to perform all non-emergency maintenance of way activities on the Pan Am routes and CSXT's Albany-Worcester route, during non-peak passenger travel periods.

6) CSXT should be ordered to provide for the operation of up to four weekend trips (two on Friday and two on Sunday), on a seasonal basis (summer) only, between Albany, NY (Post Road Crossing) and Pittsfield, MA (the Berkshire Flyer service), commencing on a date ninety (90) days following written notice from Amtrak, at maximum authorized passenger train speeds, with no required capital contribution from Amtrak for capacity related improvements, and permitting such Amtrak trains to change ends in Pittsfield on Track 1.

7) The Board shall retain jurisdiction to oversee compliance with these conditions.

IV. CONCLUSION

For the reasons set forth above, Amtrak respectfully requests that any Board approval of the Proposed Transaction be made subject to the conditions Amtrak has proposed.

August 27, 2021

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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

EXHIBIT A

Verified Statement of Richard G. Slattery

VERIFIED STATEMENT OF RICHARD G. SLATTERY

Introduction

I am Richard G. Slattery, Senior Research Director for Amtrak. I have been employed by Amtrak since 1991. Prior to joining Amtrak, I spent six years as an Associate at a Washington, D.C. law firm, where I represented a Class I freight railroad in merger proceedings before the Interstate Commerce Commission (“ICC”).

I was a Litigation Attorney in Amtrak’s Law Department from 1991 through 2002. During that time, I represented the company in railroad merger cases before the ICC and its successor, the Surface Transportation Board (“STB” or “the Board”) involving freight railroad-owned lines over which Amtrak operated. Among these railroad merger cases was the acquisition of Conrail by CSX Transportation (“CSXT”) and Norfolk Southern Railroad (“NS”), approved in 1998. During oversight proceedings following implementation of mergers, I prepared Amtrak’s reports to the STB on the performance of Amtrak trains on the impacted rail lines. I also represented Amtrak in other STB proceedings involving its operations over host freight railroads, including the 1997-1998 and subsequent proceedings in which the STB determined terms and conditions for Amtrak’s operation of its Boston-to-Portland service, now known as the *Downeaster*, over the rail lines of Guilford Transportation Inc., which is now known as Pan Am Systems (“Pan Am”).

In 2002, as Senior Director-Rail & State Policy, I joined Amtrak’s Host Railroad Group, which is responsible for Amtrak’s dealings with the railroads over which Amtrak operates pursuant to its statutory and contractual rights. I subsequently held other Amtrak positions, including Senior Director-Performance Measurement and Senior Director-National Network Strategy, before assuming my current position in 2014. Throughout the past 20 years, including

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in my current position, I have been involved in assessing the impact on Amtrak of proposed railroad mergers, line sales and leases (“railroad consolidations”) affecting rail lines over which Amtrak operates. I have participated in Amtrak’s efforts to secure agreements with the railroads proposing these consolidations, or conditions on STB approval of them, to address Amtrak’s concerns about the impact these transactions would have on Amtrak’s operations and passengers. I have also been involved in service planning for new and modified Amtrak services, monitoring and improving the on-time performance of Amtrak trains over host railroad-owned lines, issues associated with the installation of Positive Train Control (“PTC”) on host railroads on which Amtrak operates, and researching and compiling information on the history of Amtrak operations.

My verified statement will address four issues:

1. The history of the Amtrak services on the Pan Am lines and on CSXT’s Albany-Worcester line over which NS would receive trackage rights if CSXT’s acquisition of Pan Am (“the Proposed Transaction”) is approved;
2. The harm to Amtrak’s services, passengers and employees that has resulted from past railroad consolidations;
3. The very significant public investments in the Pan Am rail lines; and
4. The erroneous assertions in CSXT’s application that the Proposed Transaction would benefit Amtrak because CSXT would install PTC and make track upgrades on Pan Am lines over which Amtrak’s *Downeaster* operates.

I. History of Amtrak Service on Lines Affected by the Proposed Transaction

The Proposed Transaction is the first proposed railroad merger in which passenger trains, not freight trains, account for the majority of the train operations over many of the rail lines that will be impacted. In addition to the Boston area commuter rail services operated by the Massachusetts Bay Transportation Authority (“MBTA”) that run over Pan Am-owned or-dispatched lines, the rail lines affected by the merger are used by four Amtrak passenger services. Three state-supported intercity routes Amtrak operates in partnership with Maine, Massachusetts, Connecticut and Vermont operate over lines Pan Am owns and/or maintains and dispatches, while the Boston-to-Albany section of Amtrak’s New York/Boston-Chicago *Lake Shore Limited* operates over CSXT’s Worcester-Albany line.

What is most notable about these Amtrak services is that none of them existed when Amtrak began operation 50 years ago. The financial distress of New England’s railroads in the 1960s led them to seek, and the Interstate Commerce Commission to grant, authority to discontinue all of Northern New England’s once extensive intercity passenger rail service. The last remnant – a one-car train between Boston and Albany – ceased operation just before Amtrak initiated service on May 1, 1971.

Amtrak and its state partners have spent the last half-century restoring, improving, and investing in Northern New England’s intercity passenger rail service:

- On May 17, 1971, less than three weeks after Amtrak commenced operations, it began its first state-supported service, funded in part by the Commonwealth of Massachusetts, the Boston-Springfield-New York City *Bay State*, which operated between Worcester and Springfield over what is now CSXT’s Worcester-Albany line.

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- In 1972, Amtrak restored service over what is today the Springfield-to-St. Albans, Vermont route of the *Vermont*, which Amtrak operates in partnership with Vermont, Massachusetts and Connecticut. The *Vermont* travels in part over the now Massachusetts Department of Transportation (“MassDOT”)-owned line operated and maintained by Pan Am Southern between Springfield and East Northfield, Massachusetts.
- The 1975 initiation of the Boston-Worcester-Albany section of the *Lake Shore Limited* extended Amtrak’s long-distance network to New England and brought passenger rail service back to Pittsfield, Massachusetts.
- In 2001, the *Downeaster*, operated in partnership with Maine’s Northern New England Passenger Rail Authority (NNEPRA), restored passenger rail service between Boston and Portland, Maine, operating over what is now Pan Am between the Massachusetts/New Hampshire border and Portland. In 2012, the *Downeaster* was extended over Pan Am’s line from Portland to Brunswick, Maine.
- In 2019, Amtrak and MassDOT partnered to initiate *Valley Flyer* service between Springfield and Greenfield, Massachusetts over the MassDOT-owned portion of the *Vermont* route.

II. Past Railroad Consolidations Have Done Great Harm to Amtrak

Nearly all the railroad consolidations since the mid-1990s involving rail lines over which Amtrak operates have had two things in common.

- Like CSXT in its application to acquire Pan Am, the applicants assured the ICC or STB that approval of the consolidation would do no harm to Amtrak. Many,

like CSXT, claimed that Amtrak would benefit from their consolidations because the acquiring railroads would improve operations on the rail lines over which Amtrak trains operated.

- In nearly every case, those representations proved false. Past railroad consolidations have triggered service meltdowns that produced daily, multi-hour delays to Amtrak trains for extended periods. In addition, deterioration in track conditions resulting from one consolidation jeopardized continued operation of Amtrak trains.

I discuss below the specific negative impacts Amtrak has experienced from some of the past railroad consolidations with which I have been involved.

A. Union Pacific Acquisition of Southern Pacific

The amalgamation of Southern Pacific Transportation Company by Union Pacific Railroad (“UP”), approved by the STB in 1996, triggered a rail service meltdown in the Western United States. The meltdown impacted operations for over a year; required emergency intervention by the STB; and resulted in abysmal on-time performance for Amtrak’s long-distance trains operating over UP.

Hardest hit was the New Orleans-Los Angeles segment of Amtrak’s *Sunset Limited*, which travels over UP between Lake Charles, Louisiana, and Los Angeles through the Houston area that was the epicenter of the meltdown. During the entire three-month period from July to September 1997, the *Sunset Limited* arrived in New Orleans or Los Angeles on time only once. Multi-hour delays were a daily occurrence: during September and October of 1997 there were three trips on which the train arrived at its destination over 11 hours late. The prolonged

disruption of Amtrak service following the acquisition had devastating impacts on Amtrak's passengers and employees, and Amtrak ridership and operating costs.

B. CSXT and NS Acquisition of Conrail

When CSXT and NS acquired Conrail, their application assured the STB that performance of Amtrak trains on rail lines impacted by their acquisition would suffer no ill effects. CSXT promised the STB that it would “ensure that Amtrak operations over these line segments will not be adversely affected by the transaction.”¹

The reality was otherwise. Implementation of the Conrail acquisition on June 1, 1999 triggered an immediate NS service meltdown on lines NS acquired from Conrail. Amtrak trains traveling over NS's main line between Harrisburg and Chicago encountered miles of freight trains sitting on main line tracks outside crammed yards with no room to accommodate them. This resulted in single tracking that produced near daily delays of two or more hours on virtually all Amtrak trains operating between Harrisburg and Pittsburgh. During the meltdown, NS directed Amtrak trains to stop at locations where they blocked grade crossings and were ticketed by local police.

The NS meltdown was followed almost immediately by significant deterioration in Amtrak on-time performance on CSXT, particularly between Washington and Richmond, Virginia and between New Castle, Pennsylvania (near Pittsburgh) and Chicago. From October of 1999 through March of 2000, late trains on the latter line experienced an average of over two-and-a-half hours of delays due to freight train interference and signals alone – an abysmal performance on a route segment with a scheduled trip time of only eight hours. Major delays on

¹ See Exhibit 1, STB Finance Docket No. 33388, CSX and Norfolk Southern – Control and Operating Leases/Agreements – Conrail, Application Vol. 3A (CSX/NS-20), June 1997, Verified Statement of John W. Orrison, pp. 171-172 (excerpts).

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NS and CSXT lines impacted by the NS/CSXT acquisition of Conrail continued well into 2001, nearly two years after implementation of the acquisition.

C. Canadian National Acquisition of Illinois Central

The 1999 acquisition of Illinois Central Railroad (IC) by Canadian National Railway (CN) increased freight traffic on IC's Chicago to New Orleans main line, the route of Amtrak's *City of New Orleans*, and Chicago to Carbondale, Illinois state-supported service.

IC, the first railroad to embrace so-called "Precision Scheduled Railroading," had single-tracked its double track main line in the early 1990s to minimize track maintenance expenditures. The formerly good on-time performance of Amtrak trains operating over that line noticeably declined almost immediately after CN acquired IC and increased the number of freight trains. Amtrak on-time performance worsened in subsequent years during which CN's 2001 acquisition of the Wisconsin Central Transportation Company and 2009 purchase of the Elgin, Joliet & Eastern Railway fed additional freight traffic onto the Chicago to New Orleans line.

On-time performance of the northbound *Illini*, the Carbondale to Chicago state-supported Amtrak train that operated throughout this period, fell from 92% in the 12-month period preceding CN's 1999 acquisition of IC to 77% in the 12 month period ending in mid-2001. It reached its nadir in 2018 when only 6% of northbound *Illini* trains arrived on time and 21% were more than an hour late² on a 309-mile route with a scheduled trip time of five and a half hours.

D. CSXT Lease to Buckingham Branch

In 2004, CSXT leased an over 200-mile rail line in Virginia to Buckingham Branch Railroad, a very small short line. Included in this lease was the 127-mile segment of the route of Amtrak's New York-Washington-Chicago *Cardinal* long distance train between Orange and

² Amtrak Office of Inspector General, "Train Operations: Better Estimates Needed of the Financial Impacts of Poor On-Time Performance," OIG-A-2020-001 (Oct. 14, 2019), pp. 11-12 (https://www.oversight.gov/sites/default/files/oig-reports/OIG-A-2020-001_OTP_mandate.pdf).

Clifton Forge, Virginia. The effect of the lease would be to shift maintenance responsibility to Buckingham Branch, even though unit coal and grain trains operated by CSXT would continue to operate over the line.

In the STB proceeding for approval of the lease, both Amtrak and the Commonwealth of Virginia expressed concerns about whether the line would be maintained to levels necessary for continued operation of Amtrak service. The STB rejected Amtrak's request for a condition requiring that the line be maintained to existing levels, and Virginia's similar request, stating that Buckingham Branch "had ample incentive to keep the track well maintained" and that "Amtrak's and the Commonwealth's interests will be amply protected without the conditions they seek."³

Unfortunately, Amtrak's and Virginia's concerns proved to be well-founded. Delays to the *Cardinal* due to slow orders on the segment leased to Buckingham Branch increased 38% between fiscal year 2004 (October 2003-September 2004), the last full year before the lease to Buckingham Branch, and fiscal year 2006, the first full year in which Buckingham Branch was responsible for track maintenance, and increased further thereafter. Virginia subsequently began providing funding to Buckingham Branch for rail, tie, signal and tunnel work: a total of more than \$31 million to date.⁴ Had this state-funded work not been performed, suspension of Amtrak service on the *Cardinal* route would almost certainly have been necessary due to deteriorated track conditions.

* * *

What is most troubling about these past railroad consolidations is that the on-time performance of most affected Amtrak trains never returned to pre-consolidation levels. Rail

³ STB Finance Docket No. 34495, Buckingham Branch Railroad-Lease-CSX Transportation, Decision served Nov. 5, 2004 at 9-10.

⁴ Commonwealth Transportation Board, "Rail and Public Transportation Improvement Program" for FY22 (<http://www.drpt.virginia.gov/media/3456/fy22-syip-sent-6-16-2021-w-page-nos.pdf>, pp. 71-72) and FY16 (<http://www.drpt.virginia.gov/media/1636/fy16-syip-final-approved-6-17-2015.pdf>, pp. 79-80).

consolidations have been good for railroads and their investors. But they have not been good for Amtrak, its passengers and its employees. Nor have they benefited the taxpayers who have been forced to cover the increased operating expenses and lost passenger revenues attributable to consolidation-caused delays on state-supported and federally-funded long distance routes, and the infrastructure maintenance costs that consolidations have shifted from profitable freight railroads to the public purse.

III. Federal and State Governments Have Made Very Substantial Investments in Pan Am Infrastructure

The Association of American Railroads states on its website that “The vast majority of America’s freight railroads own, build, maintain, operate and pay for their infrastructure with little or no government assistance.”⁵ While that may be true, it is most definitely not the case on the Pan Am lines that CSXT seeks to acquire.

Since the late 1990s, there has been an enormous investment of public money in the just over 1,000 miles of rail lines owned and/or operated by Pan Am. The majority of this funding was provided to support initiation or improvement of state-supported Amtrak services. The major federal and/or state-funded investments in Pan Am infrastructure during this period include:

- The approximately \$54 million, funded primarily with federal grants, that the Northern New England Passenger Rail Authority (NNEPRA) paid Pan Am between 1999 and 2001 to rehabilitate Pan Am’s main line between the

⁵ www.aar.org/article/freight-rails-private-investments/

Massachusetts/New Hampshire border and Portland to enable initiation of Amtrak's *Downeaster* service between Boston and Portland.⁶

- A \$38.4 million federal grant in 2010, funded by the American Recovery and Investment Act of 2009 (ARRA), that paid for track, bridge and grade crossing upgrades on Pan Am's main line between Portland and Brunswick, Maine to facilitate extension of *Downeaster* service to Brunswick.⁷

- [REDACTED]
[REDACTED]⁸

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁹

- [REDACTED]
[REDACTED]¹⁰

- \$110 million in public funding, provided by a \$72.8 million federal ARRA grant and [REDACTED]
[REDACTED]

⁶ See Exhibit A-2, STB Finance Docket No. 33697, National Railroad Passenger Corporation-Petition for Declaratory Order-Weight of Rail, NRPC's Motion for Further Clarification (April 12, 2002), Verified Statement of Michael J. Murray, pp. 3-5 (excerpts).

⁷ https://railroads.dot.gov/sites/fra.dot.gov/files/2019-11/NE%20Fact%20Sheet_071513.pdf

⁸ See Exhibit A-3, Responses and Objections of 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 and Massachusetts Railroad Company dated June 21, 2021 and relevant portions of Exhibit A attached thereto ("Pan Am Responses").

⁹ Ibid.

¹⁰ Ibid.

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Moreover, as CSXT has acknowledged, funding for PTC installation will be provided primarily by *Amtrak*, and not by CSXT as the statement in its application implies.¹⁴

B. The Track Upgrades CSXT Claims will Benefit the *Downeaster* are on Line Segments Over Which It Does Not Operate

The Application's discussion of the benefits to the *Downeaster* route that CSX claims would result from the Proposed Transaction touts the fact that "CSXT plans to restore the PAR System mainline track conditions from FRA Class 1 to FRA Class 2 standards" and "upgrade the remaining PAR system freight mainline jointed rail." CSXT promised investments, which would only allow passenger trains to operate at a maximum speed of 30 miles per hour, have nothing to do with the *Downeaster* route – they will be made in *Northern Maine*, where the *Downeaster* does not operate.

The portions of Pan Am's main line where the *Downeaster* does operate – between the Massachusetts/New Hampshire border and Royal Junction, Maine (14 miles northeast of Portland) – were upgraded to FRA Class 4 standards, with jointed rail replaced by welded rail, in conjunction with the 1999-2001 rehabilitation project that enabled initiation of the *Downeaster*¹⁵ and subsequent projects to extend and improve *Downeaster* service identified above. All of these projects were primarily funded by NNEPRA, using federal and state grants.

In fact, the real beneficiary of track upgrades on the *Downeaster* route is CSXT. Because of the past public investments of nearly [REDACTED] on the 92-mile segment of Pan Am's main line over which the *Downeaster* operates, CSXT will not have to make the expenditures it plans on other portions of the Pan Am main line to bring track conditions to the levels required for its freight services.

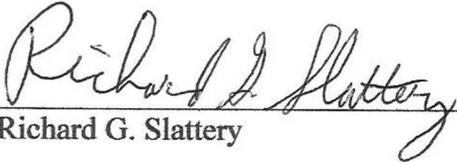
¹⁴ CSXT-NNEPRA Agreement dated Aug. 3, 2021 (filed Aug. 5, 2021), pp. 4-5.

¹⁵ See STB Finance Docket No. 33697, National Railroad Passenger Corporation-Petition for Declaratory Order-Weight of Rail, Decision served Jan. 31, 2003.

VERIFICATION

I, Richard G. Slattery, declare 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 August 26, 2021


Richard G. Slattery

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

EXHIBIT A-1

REDACTED - TO BE PLACED ON PUBLIC FILEBEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**RAILROAD CONTROL APPLICATION****VOLUME 3A OF 8**CSX OPERATING PLAN, LABOR IMPACT EXHIBIT,
DENSITY CHARTS AND SUPPORTING STATEMENTS
(EXHIBITS 13 AND 14)

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J. GARY LANE
JAMES L. HOWE, III
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Consolidated Rail Corporation*

VERIFIED STATEMENT

OF

JOHN W. ORRISON

REDACTED - TO BE PLACED ON PUBLIC FILE

- Between Philadelphia and NY, and between Baltimore and Landover, MD, rights shall be shared equally and scheduled alternately;
- Between Baltimore and Philadelphia, CSX shall be limited to 4 trains per day.

CSX plans to operate a daily northbound and southbound freight train from Washington to Newark via Amtrak's NEC. Additionally CSX will operate trains from Washington to Bowie for movement on CSX acquired Conrail lines to southern Maryland. Local freight service from Philadelphia to Newark will be provided by CSAO crews.

8.1.2 Other Line Segments

Amtrak currently operates 70 intercity trains over CSX and CSX-acquired Conrail line segments. Amtrak train names, numbers, and the cities of origin and destination are listed on Table 13.8-1 in Appendix C of this Exhibit 13-CSX, which also includes the specific line segments of the expanded CSX system that each train traverses.

CSX does not expect any impact on Amtrak operations as a result of projected train operations and all passenger trains will be dispatched in accordance with all FRA safety regulations and procedures.

Amtrak trains presently receive operating priority over freight trains from both CSX and Conrail under the terms of their operating contracts with Amtrak, and CSX will continue to afford Amtrak trains priority. CSX has just renewed its operating

REDACTED - TO BE PLACED ON PUBLIC FILE

agreement with Amtrak for a term of five years, expiring March 31, 2002. Conrail has a ten-year agreement with Amtrak, expiring April 14, 2006.

As explained below, most of the line segments over which Amtrak operates would experience little or no increase in freight traffic (fewer than three additional freight trains per day), with some line segments experiencing decreases in freight traffic.

A smaller number of line segments over which Amtrak operates would experience moderate increases in freight traffic (three to eight additional freight trains per day). These lines, however, all have sufficient capacity to accommodate the increase in freight traffic without any impact on Amtrak service.

Only a few line segments over which Amtrak operates, totalling about 287 miles of track, would experience increases in freight traffic greater than eight freight trains per day. All but eight miles of this track carry just one Amtrak train in each direction each day. Existing line capacity and planned capacity improvements will ensure that Amtrak operations over these line segments will not be adversely affected by the transaction.

The following Amtrak routes would experience at most a moderate (three to eight freight trains per day) increase in freight traffic on some line segments:

(1) The route of all Amtrak trains (eight daily) moving north out of New York City and then west over the New York Central Water Level Route toward Buffalo would experience a

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

EXHIBIT A-2



EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

National Railroad Passenger
Corporation -- Petition for
Declaratory Order -- Weight
of Rail

)
)
) STB Finance Docket No. 33697
)
)

ENTERED
Office of the Secretary
APR 12 2002
Part of
Public Record

NATIONAL RAILROAD PASSENGER CORPORATION'S
MOTION FOR FURTHER CLARIFICATION
OF THE BOARD'S OCTOBER 22, 1999 DECISION

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Counsel for National Railroad
Passenger Corporation

April 12, 2002

VERIFIED STATEMENT OF
MICHAEL J. MURRAY

My name is Michael J. Murray. I am Executive Director of the Northern New England Passenger Rail Authority ("NNEPRA"). My business address is 58 Fore Street, Building 30, Portland, Maine 04101.

NNEPRA is a body politic and corporate established by Maine statute in 1995 to promote rail passenger service between points in Maine and points within and outside the state. Its first priority, as established by the Maine legislature, is the restoration of rail passenger service between Portland, Maine and Boston, Massachusetts.

Professional Background and Prior Testimony

Throughout my more than thirty years in state government, I have been involved in rail transportation matters of importance to the State of Maine in one capacity or another. I graduated from the University of Maine at Orono in 1972 with a Bachelor of Science Degree in Civil Engineering. I am a Registered Professional Engineer in the State of Maine, and have served on the Rail Technical Committee for the Coalition of Northeastern Governors and as an advisor to the Maine Department of Transportation on matters relating to the implementation and

dealings and communications among NNEPRA and Amtrak, on the one hand, and Guilford, on the other, with respect to (i) establishing 79 miles-per-hour Amtrak operations over the Plaistow-Portland line and (ii) conducting track deflection and track modulus testing on the line to confirm the appropriateness of operations at that speed.

A. Rehabilitation of the Plaistow-Portland Line and Initiation of Amtrak Operations

Rehabilitation Work. As of July 2001, rehabilitation work on the 78-mile Plaistow-Portland line was substantially completed, at a cost of approximately \$54 million. ^{1/} By agreement, NNEPRA provided the funding for this work, and Guilford actually performed the work. The purpose of the work was to bring the line up to FRA Class 4 standards and thereby support 79 miles-per-hour operations by Amtrak.

The parties entered into an agreement effective January 6, 1999 entitled "Agreement Among Northern New England Passenger Rail Authority, National Railroad Passenger Corporation, and Springfield Terminal Railway Company, Boston and Maine Corporation, and Portland Terminal Company Concerning Resolution of Disagreement Regarding Train Speeds" (the "Class 4

^{1/} The remainder of the 114-mile line between Boston and Portland is owned by the Massachusetts Bay Transportation Authority.

Rehabilitation Agreement") (see Attachment 1). In that agreement, the parties agreed upon the scope of work necessary to upgrade the Plaistow-Portland line to FRA Class 4 in all respects but one: the required weight of rail (which the parties agreed to submit to the Board for resolution, NNEPRA and Amtrak concluding that 115-pound rail was adequate, and Guilford claiming that 132-pound rail was required). ^{2/} The agreement also specified by line segment the speeds up to 79 miles per hour at which Amtrak would operate if the Board were to agree with NNEPRA and Amtrak that 115-pound rail was adequate to support such speeds.

Whereas rehabilitation of the line to FRA Class 3 standards (which would have limited Amtrak's trains to maximum speeds of 60 miles per hour) had been projected to cost

^{2/} As provided in the Class 4 Rehabilitation Agreement,

Amtrak and NNEPRA wish to amend the Rehabilitation Agreement and the Terms and Conditions to provide for the operation of Amtrak trains at speeds up to 79 miles per hour (FRA Class 4) as set forth in the revised Appendix I attached hereto. Amtrak, NNEPRA and Railroad have already agreed upon certain changes to the Scope of Work, jointly acknowledged to be appropriate to permit the safe, consistent and continuous operation of Amtrak trains at these higher speeds. Amtrak, NNEPRA and Railroad have been unable, however, to reach agreement on one final issue [i.e., the rail weight issue].

Id. at 2 (emphasis added).

\$39.6 million, NNEPRA ultimately spent \$54 million in rehabilitating the line to satisfy FRA Class 4 standards. This \$54 million expenditure was some \$10 million more than the \$44 million originally contemplated under the Class 4 Rehabilitation Agreement. The work actually done on the line at NNEPRA's behest surpassed in material respects what the parties agreed in the Class 4 Rehabilitation Agreement was needed to permit "safe, consistent and continuous operation of Amtrak trains" at speeds up to 79 miles per hour.

Supplemental improvements included the installation of some 109,000 new mainline ties (approximately 1,400 ties per mile), almost 40 percent more ties than specified under the Class 4 Rehabilitation Agreement. In addition, two surfacing passes were made on the mainline, installing 190,000 tons of ballast (more than 2,000 tons per mile) - almost twice the ballast previously agreed on.

This rehabilitation work has put the Plaistow-Portland line into excellent physical shape. This is evidenced, among other things, by the very favorable track geometry readings obtained by Amtrak's track geometry car when it tested the line last Summer, and by the similarly favorable track deflection and track modulus findings made by the Transportation Technology

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

EXHIBIT A-3

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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 AND MASSACHUSETTS RAILROAD COMPANY

**RESPONSES AND OBJECTIONS OF 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 AND MASSACHUSETTS
RAILROAD COMPANY (collectively “Pan Am”)**

Pan Am responds as follows to First Set of Discovery Requests of National Railroad
Passenger Corporation (“Amtrak”) to Pan Am.

GENERAL OBJECTIONS

1. Pan Am objects to Amtrak’s discovery requests to the extent that they call for information or documents subject to the attorney-client privilege, the attorney work doctrine, or any other legal privilege or protection. Any production of privileged or otherwise protected documents or information is inadvertent and shall not constitute a waiver of any claims of privilege or other protection.
2. Pan Am objects to Amtrak’s discovery requests to the extent that they seek information or documents that are not directly relevant to this matter, to the extent that they seek documents in a form not maintained by Pan Am in the regular course of business, to the extent that a response would impose an unreasonable burden on Pan Am, to the extent

that they seek “all” documents relating to a request, and to the extent that they seek information or documents that are as readily, or more readily, available to Amtrak as Pan Am.

3. Pan Am objects to the Amtrak discovery request to the extent that they seek information or documents that constitute or disclose confidential, proprietary, or sensitive nonpublic information. Subject to and without waiving this objection, Pan Am will produce information responsive to Amtrak’s discovery requests, if not otherwise objectionable, subject to the terms of the Protective Order in this proceeding. Pan Am reserves the right to seek additional protection as needed.
4. Pan Am objects to the Amtrak discovery requests to the extent that they seek information or documents that constitute or disclose information that would result in a violation of any contractual obligation to a third party, or in the violation of 49 U.S.C. s. 11904, which relates to the disclosure of certain shipper or consignee information.
5. Pan Am objects to the production of documents prepared in connection with, or information relating to, possible settlement or mediation of this or any related proceeding.
6. Pan Am objects to the Amtrak discovery requests to the extent that those requests seek information and/or documents in Pan Am’s possession that are publicly available and/or are already in Amtrak’s possession, or would require Pan Am to search for and produce information or documents that are not within Pan Am’s possession, custody or control.
7. Pan Am objects as unduly burdensome to the Amtrak request that Pan Am produce any responsive documents no later than 15 days from the date of service of the Amtrak discovery requests. Pan Am will promptly provide responsive, non-objectionable materials.
8. Pan Am objects to Instruction No. 8 regarding privilege logs as unduly burdensome and inconsistent with STB practice.
9. Pan Am incorporates these General Objections into each Objection below as if fully set forth therein.

OBJECTIONS AND RESPONSES TO AMTRAK INTERROGATORIES

Amtrak Interrogatory No. 1: Identify each person who supplied information for, who was consulted with, or who participated in the preparation of the answers to these interrogatories. As to each person, identify the answer(s) for (or in which) he or she was consulted, supplied information, or participated.

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

Pan Am Response:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Amtrak Interrogatory No. 2: Identify all grants or other funding (other than the grants awarded or proposed grant applications identified on pages 35-36 of the Significant Transaction Operating Plan [pdf pages 258-259 of the Amended Application]) that the PAR System has received over the past 10 years, expect to receive, are applying for, has proposed applying for, or plan to seek or are considering seeking from federal, state or local governmental entities, body politics, or other publicly funded entities for projects for capital improvements on the PAR System. Include in your description (i) the name of the project; (ii) the project's location; (iii) the total cost or projected cost; and (iv) who funded or will be funding the cost of the project, and if more than one entity how the cost or projected cost was or will be allocated among them.

Pan Am Response:

[REDACTED]

Please see attached Exhibit A.

OBJECTIONS AND RESPONSES TO AMTRAK'S REQUESTS FOR PRODUCTION OF DOCUMENTS

Amtrak Request for Production No. 1: Current employee timetables for the PAR System.

Pan Am Response: [REDACTED]

Please see attached Exhibit B

Amtrak Request for Production No. 2: Historical (2015-2020) MOW work data for the PAR system for any MOW projects that resulted in a track or line closure of more than two hours duration, including (i) the state and end dates of each project; (ii) the starting and ending mileposts of each project; (iii) the type of work done; (iv) the budget for such work.

Pan Am Response: [REDACTED]

Please see attached Exhibit C.

Amtrak Request for Production No. 3: Historical slow order data for the PAR system, including (i) the state and end dates of each slow order; (ii) the starting and ending mileposts of each slow order; and (iii) the speed reduction of each slow order.

Pan Am Response: [REDACTED]

Please see attached Exhibit D.

Amtrak Request for Production No. 4: All documents identified in response to the above interrogatories, and all documents used or consulted in the course of the preparation of Your responses to each of these Interrogatories.

Pan Am Response: [REDACTED]

Dated: June 21, 2021

/s/ Robert B. Burns

Robert B. Burns

Robert B. Culliford

Pan Am Systems, Inc. et al.

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North Billerica, MA 01862

rburns@panamrailways.com

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Counsel for Pan Am

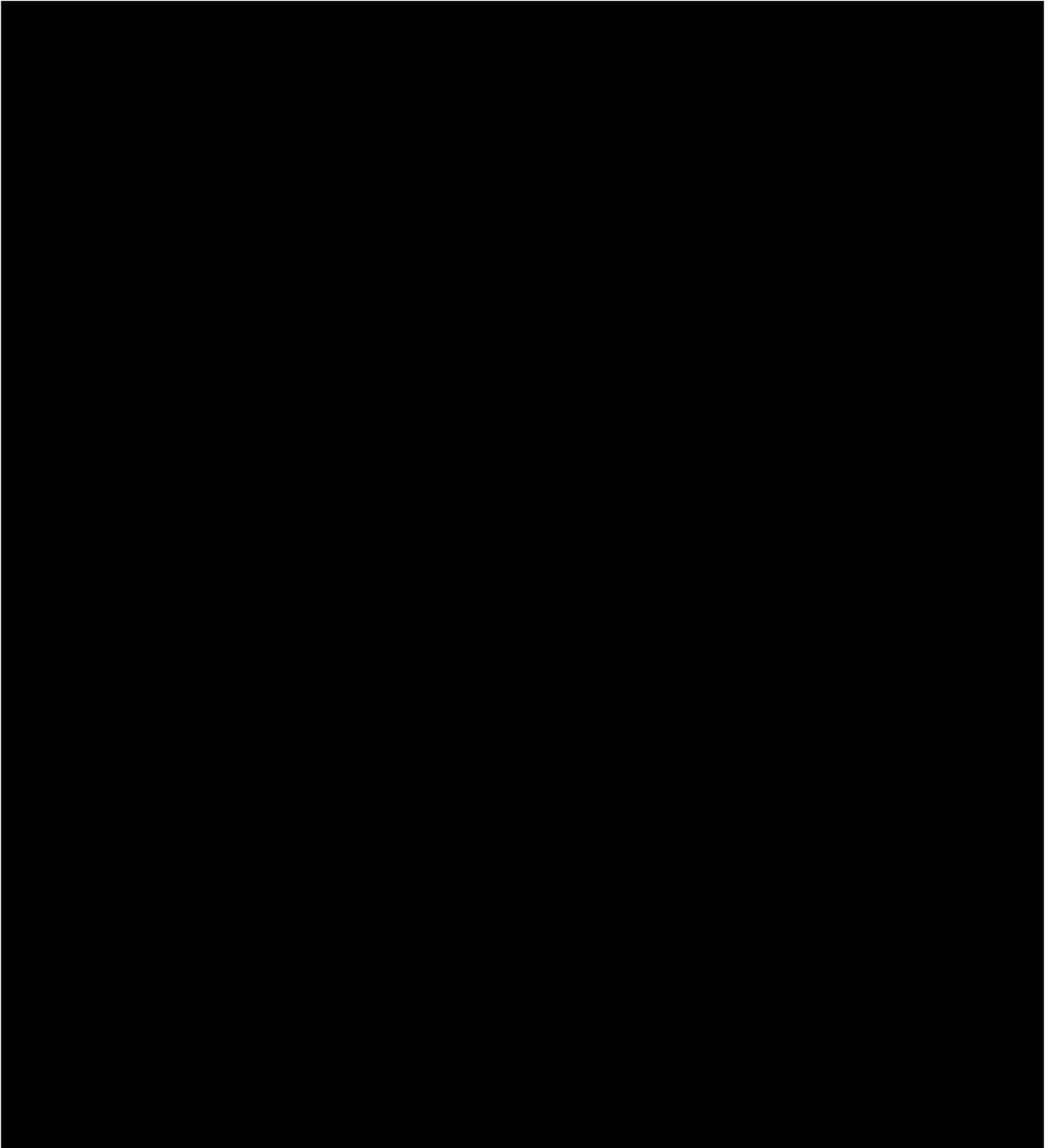
CERTIFICATE OF SERVICE

I, Robert B. Burns, declare under pains and penalties of perjury that the foregoing is true and correct. Pursuant to 49 CFR 1104.12, I hereby certify that on this day I have caused to be served a copy of the forgoing Responses to the First Discovery Requests of National Railroad Passenger Corporation upon all parties of record via electronic mail.

Executed on: June 21, 2021

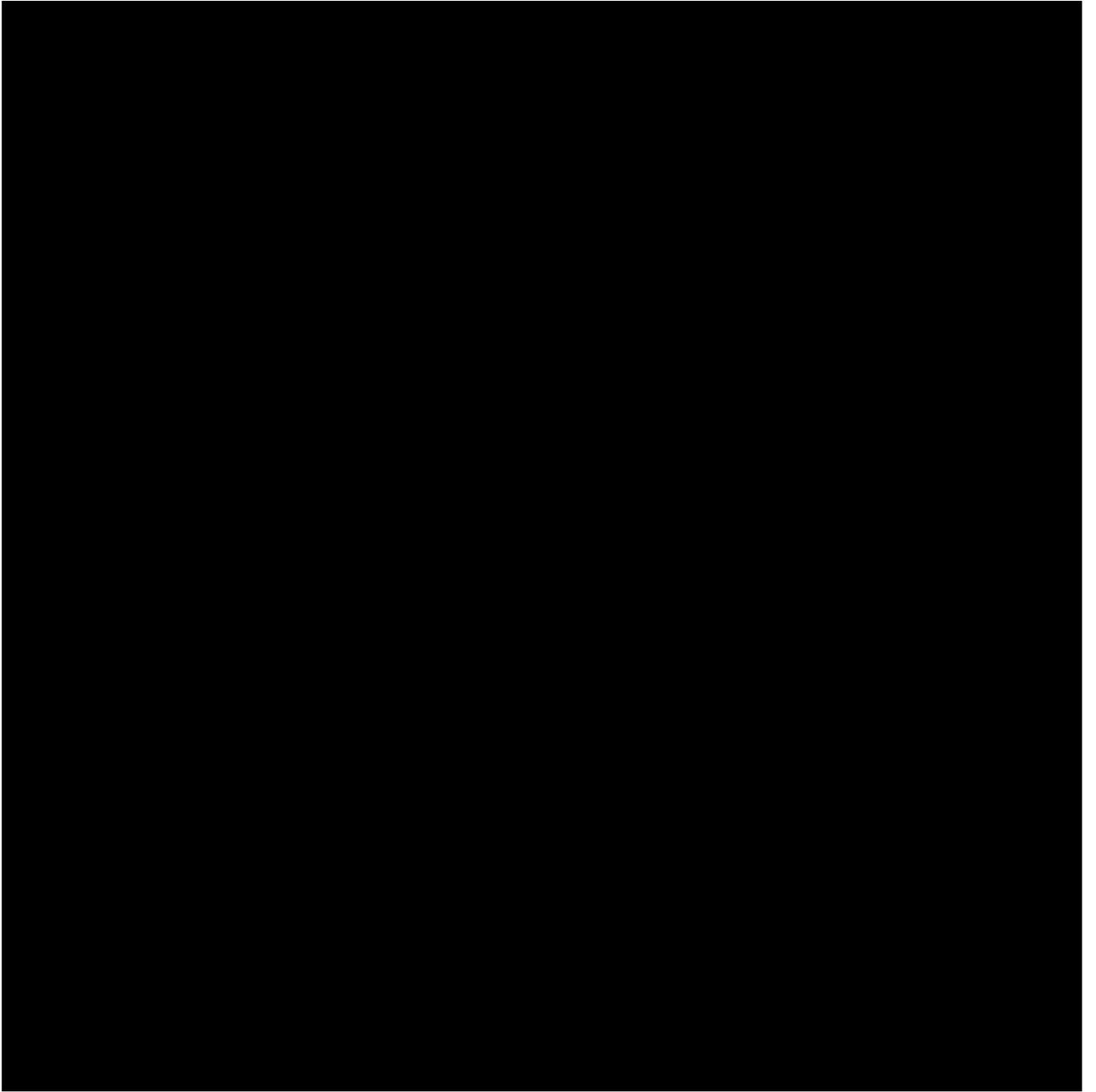
By: /s/ Robert B. Burns

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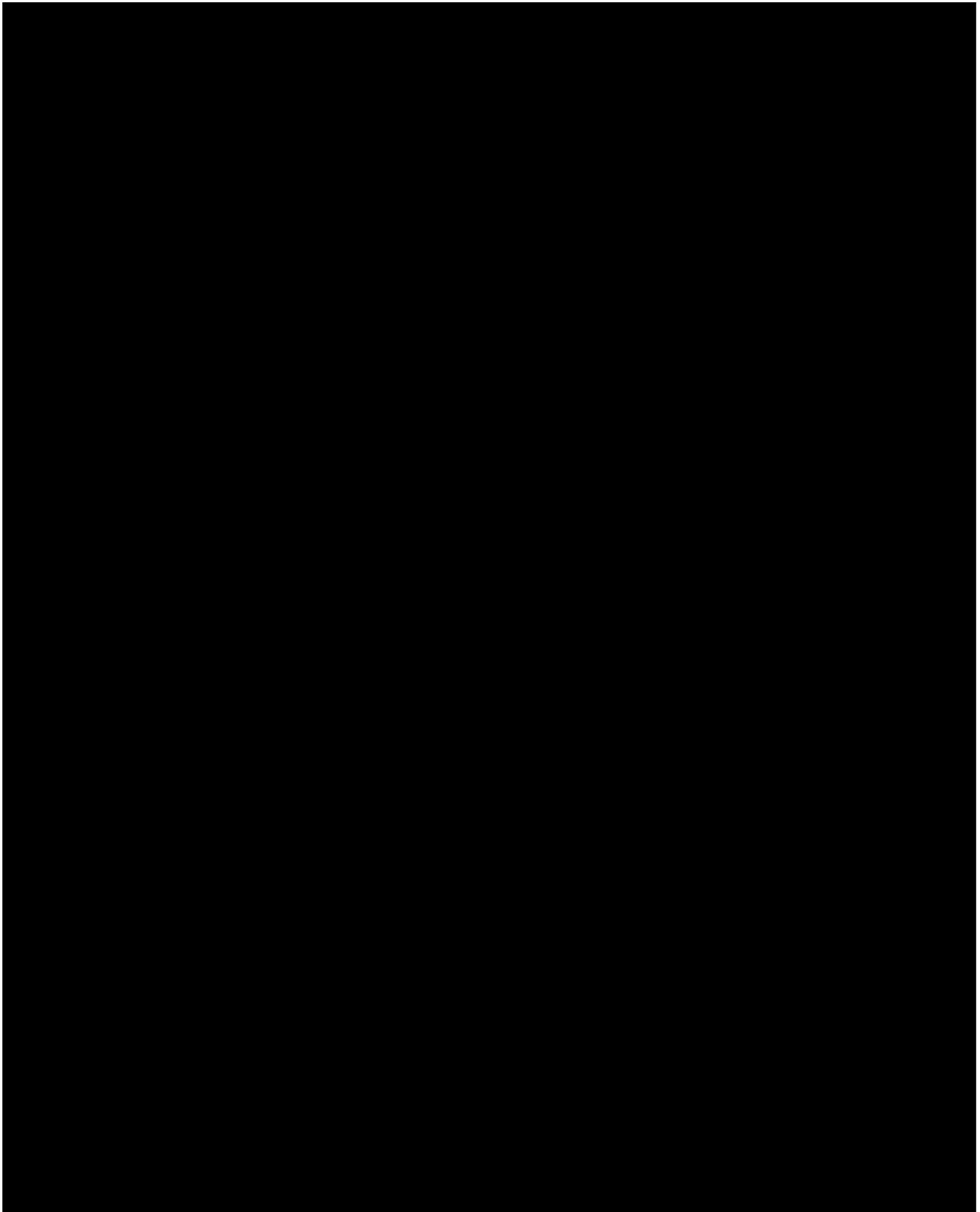


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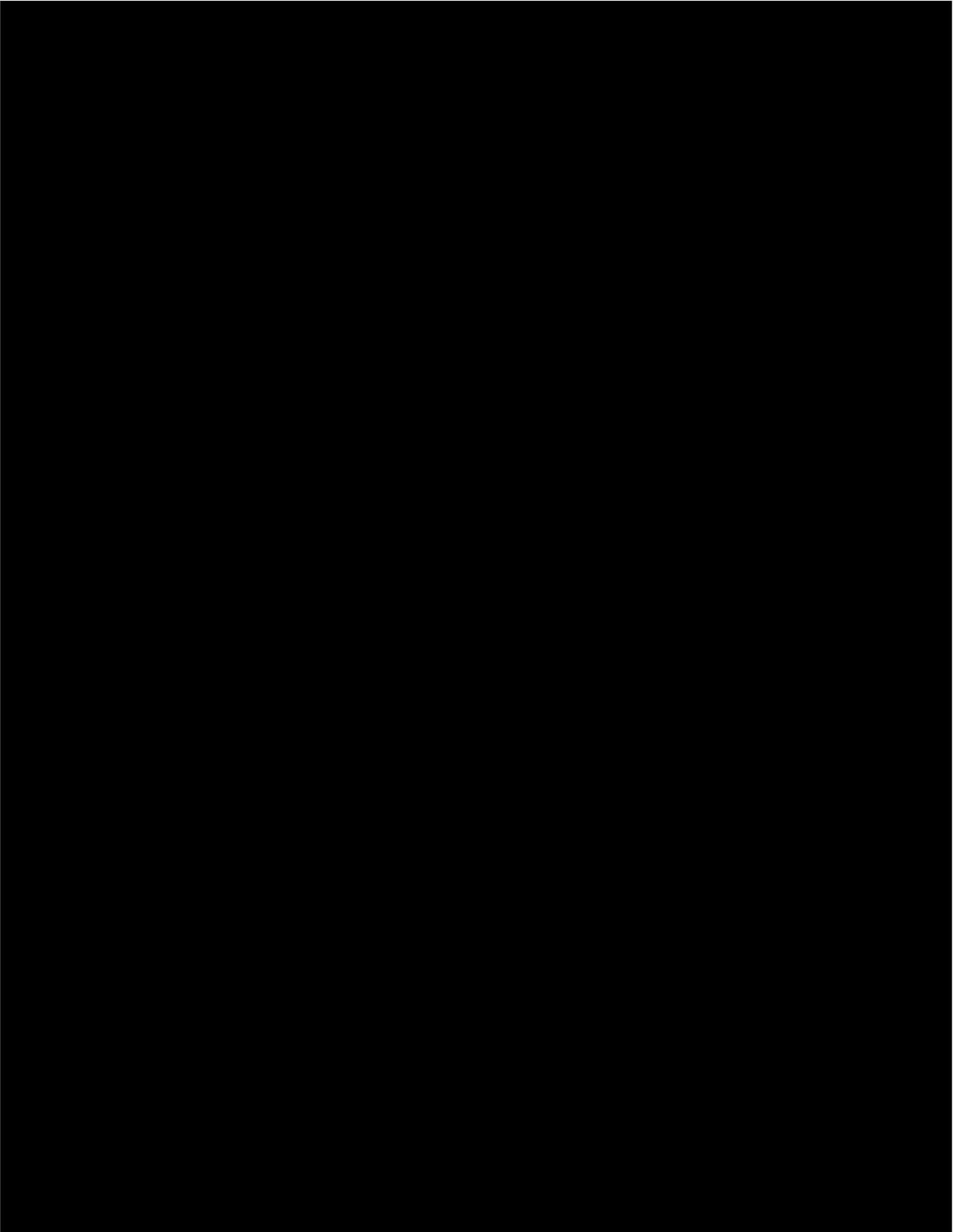
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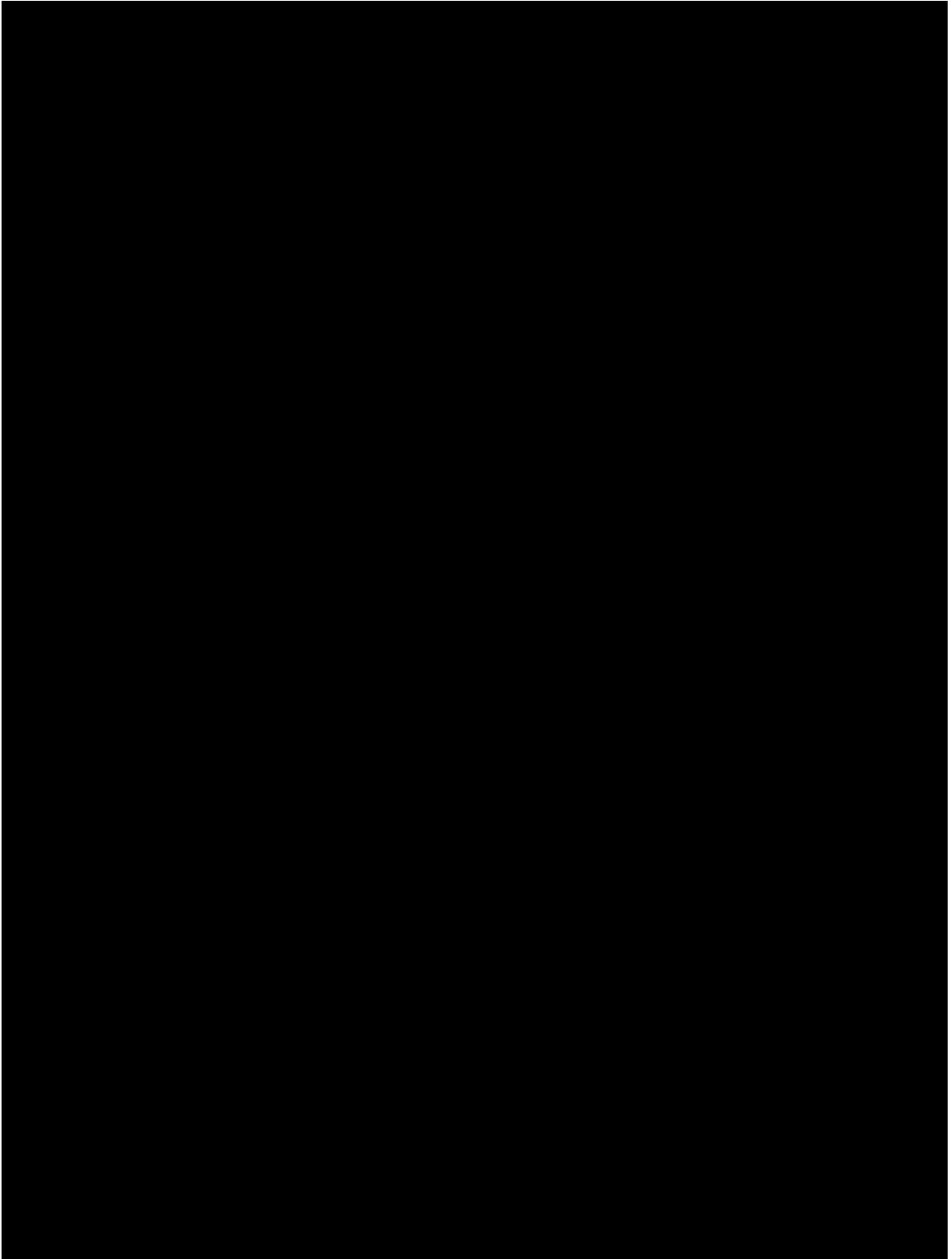


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BEFORE THE
SURFACE TRANSPORTATION BOARD

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,
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TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

EXHIBIT B

Verified Statement of Kyle Montgomery

VERIFIED STATEMENT OF KYLE MONTGOMERY

Introduction

I am Kyle Montgomery, a Principal Analyst for the National Railroad Passenger Corporation (“Amtrak”). I have been employed by Amtrak since October 2016. In March 2019, I joined the Host Railroad Group, which is responsible for Amtrak’s dealings with the railroads over which Amtrak operates pursuant to its statutory and contractual rights. One of my primary responsibilities over the last two years has been to manage Amtrak’s working relationship with CSXT on a regular basis.

In my experience, CSXT is one of the most challenging host railroad partners for Amtrak to work with. Often, it is only after protracted negotiations, threats of litigation, or internal and external escalations, that issues are resolved (and many issues remain unresolved). These behaviors are inconsistent with the conduct of most other Amtrak host railroads. In addition to the protracted Gulf Coast dispute, for which we recently have sought the Board’s intervention,¹ the following are selected examples where CSXT has taken positions which seem unreasonable or inconsistent with CSXT’s statutory and contractual obligations to Amtrak.

Springfield, Massachusetts

CSXT has been uncooperative in its handling of Amtrak’s passenger rail services in the Springfield, Massachusetts area where Amtrak operates *Vermont* service between Washington, District of Columbia and St. Albans, Vermont and the *Valley Flyer* service between Springfield and Greenfield, Massachusetts over the Knowledge Corridor, as well as Amtrak’s *Lake Shore Limited* between Chicago and Boston via Springfield.

¹ See STB Finance Docket No. 36496, Application of the National Railroad Passenger Corporation under 49 U.S.C. § 24308(e) - CSX Transportation, Inc. and Norfolk Southern Corporation.

Amtrak was granted an easement from Conrail in 1978 to cross the Conrail (now CSXT) property in order to access the Amtrak station property in Springfield. A grade crossing and driveway are the only vehicular access and the only 24/7 employee access to the Amtrak station property. CSXT has regularly questioned and disputed Amtrak's usage of the crossing and CSXT's obligation to maintain the crossing consistent with the terms of the easement and the Amtrak-CSXT operating agreement.

At a separate time, CSXT claimed that Amtrak needed to amend the operating agreement to operate the Valley Flyer service over a railroad diamond near the Springfield Station, even though *Valley Flyer* service trains did not operate on the "Rail Lines" of CSXT, as that term is defined in the operating agreement, but rather on tracks owned by the Commonwealth of Massachusetts Department of Transportation ("MassDOT"). During this dispute, CSXT insisted that Amtrak was required to file a request for a "modification of service" and to undertake a capacity study to add service on the "Rail Lines" of CSXT, even though Amtrak trains were traveling North - South on the MassDOT line while the CSXT line goes East - West.

Operations for such a railroad crossing is typically governed by a joint facility agreement. Amtrak's inquiries to the predecessor railroads and former railroad joint facility managers indicated that operations over this diamond are likewise covered by such an agreement to which CSXT and MassDOT are now parties. CSXT, however, would not produce said document for Amtrak or provide any language to support their position that CSXT approval was required. The suggestion that Amtrak should be required to obtain separate agreement to operate on tracks owned by another carrier over a diamond crossing is unprecedented in Amtrak's dealings with other freight partners, despite the fact that Amtrak trains cross many diamonds around the country.

Berkshire Flyer Service

Another example of CSXT resistance to Amtrak's requests for additional service, as they have done in the Gulf Coast dispute, is CSXT's handling of Amtrak's request for additional passenger service between Albany, New York (Post Road Crossing) and Pittsfield, Massachusetts, known as the *Berkshire Flyer*.

On July 22, 2019, Amtrak, on behalf of MassDOT, sent a formal request for a seasonal weekend extension of an Empire Service train between Albany and Pittsfield, on only Friday and Sundays, for the summer season from Memorial Day through Labor Day. The proposed service included only 36.9 miles of additional Amtrak service on CSXT per one-way trip, with a total of two round trips per week. In response, CSXT requested a draft term sheet to facilitate an extensive (and expensive) capacity study in order "to initiate the joint planning process"². While preparing the draft term sheet and confirming details with the sponsoring agency, on March 6, 2020, Amtrak requested that a pilot service be run under the operating agreement's existing "special train" provisions for the 2020 season while the study was completed.

On March 12, 2020, CSXT returned Amtrak's draft term sheet with edits and added several conditions that Amtrak deemed unacceptable. One of the most concerning to Amtrak, was the CSXT statement that they could make no commitments on the length of the study, when it would be completed, or when it could begin. The only commitment they could make was that they would not start the study until after the Gulf Coast study was completed, as they did not have the resources to study both routes simultaneously.

On March 16, 2020, CSXT rejected Amtrak's request for a pilot service, as they believed the twice weekly seasonal train to be unfeasible due to traffic volume and projected station

² See Exhibit B-1, Email from Marco Turra of CSXT dated August 9, 2019.

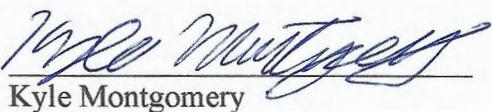
dwells. They went on to state that they would not approve any service, temporary or otherwise, without infrastructure improvements first being completed.

Since the series of March discussions, CSXT, MassDOT, and Amtrak have made no substantive progress in adding the seasonal weekend extension, which Amtrak had at one time expected to commence in May 2021. Based on Amtrak's history with CSXT, we do not expect CSXT to approve the request without demanding additional studies, funding for infrastructure improvements, additional contractual incentives, or some other combination of requirements disproportionate to the modest addition of twice weekly seasonal service initially proposed.

VERIFICATION

I, Kyle Montgomery, declare 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 August 26, 2021



Kyle Montgomery

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

EXHIBIT B-1

From: Turra, Marco <Marco_Turra@csx.com>
Sent: Friday, August 9, 2019 2:38 PM
To: Montgomery, Kyle; Daly, Andy
Cc: Craig, Sean; Chittenden, Kevin; Mael, Caroline
Subject: RE: Pittsfield, MA Seasonal Service

Kyle,

Thanks for sending the request for a seasonal service. Consistent with the approach used in other projects, we request a draft term sheet for our review and comments to initiate the joint planning process.

Thanks!

Marco

From: Montgomery, Kyle <Kyle.Montgomery@amtrak.com>
Sent: Friday, July 26, 2019 2:05 PM
To: Daly, Andy <Andy_Daly@CSX.com>
Cc: Turra, Marco <Marco_Turra@csx.com>; Craig, Sean <Sean_Craig@CSX.com>; Chittenden, Kevin (External) <chittek@amtrak.com>; Mael, Caroline <Caroline.Mael@amtrak.com>
Subject: Pittsfield, MA Seasonal Service

Andy,

Please see the attached formal letter for a seasonal weekend extension that MassDOT would like to put in place next summer. Please review and get back to us.

The schedule provided is tentative. If there are alternatives that might work better for CSX we are open to discussing it.

Thanks,
Kyle

Kyle Montgomery
Principal - Host Railroads
30th Street Station | 4N-171 | Philadelphia, PA 19104
Email: kyle.montgomery@amtrak.com | Mobile: (202) 360-1877 | Office: (215) 349-3912



- EXTERNAL SENDER

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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

EXHIBIT C

CSX Response

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

**RESPONSES AND OBJECTIONS OF CSX CORPORATION AND
CSX TRANSPORTATION, INC. TO FIRST SET OF DISCOVERY REQUESTS OF
NATIONAL RAILROAD PASSENGER CORPORATION TO CSX**

CSX Corporation (“CSXC”) and CSX Transportation, Inc. (“CSXT”) (CSXC and CSXT are collectively referred to as “CSX”) respond as follows to First Set of Discovery Requests of National Railroad Passenger Corporation (“Amtrak”) to CSX:

GENERAL RESPONSES

The following General Responses apply to each of Amtrak’s document requests:

1. Where CSX states that it will produce documents, CSX will conduct a reasonable search for responsive, non-privileged documents, subject to any other qualifications specified in its response and the terms of the Protective Order in this proceeding.
2. Production of documents does not necessarily imply that they are relevant to or admissible in this proceeding and is not to be construed as waiving any of the general or specific objections stated below.

GENERAL OBJECTIONS

CSX objects to Amtrak’s discovery requests on the following grounds:

1. **Privilege.** CSX objects to Amtrak’s discovery requests to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege or protection. Any production of privileged or otherwise protected documents is inadvertent and shall not constitute a waiver of any claims of privilege or other protection.

2. **Relevance/Burden.** CSX objects to Amtrak's discovery requests to the extent that they seek information or documents that are not directly relevant to this matter, to the extent that they seek documents in a form not maintained by CSX in the regular course of business, to the extent that a response would impose an unreasonable burden on CSX, to the extent that they seek "all" documents relating to a request, and to the extent that they seek information or documents that are as readily, or more readily, available to Amtrak as CSX.

3. **Confidential Information.** CSX objects to the Amtrak discovery requests to the extent that they seek information or documents that constitute or disclose confidential, proprietary, or sensitive nonpublic information. Subject to and without waiving this objection, CSX will produce information responsive to Amtrak's discovery requests, if not otherwise objectionable, subject to the terms of the Protective Order in this proceeding. CSX reserves the right to seek additional protection as needed.

4. **Third Party Information.** CSX objects to the Amtrak discovery requests to the extent that they seek information or documents that constitute or disclose information that would result in the violation of any contractual obligation to a third party, or in the violation of 49 U.S.C. § 11904, which relates to the disclosure of certain shipper or consignee information.

5. **Settlement/Mediation.** CSX objects to production of documents prepared in connection with, or information relating to, possible settlement or mediation of this or any related proceeding.

6. **Special Study.** CSX objects to the Amtrak discovery requests to the extent that they seek information that would require CSX to undertake any special study. CSX will produce responsive information that it possesses which is not otherwise subject to objection in the form in which it possesses such information, but will not conduct any special studies to respond to the Amtrak discovery requests.

7. **Scope of Requests.** CSX objects to the Amtrak discovery requests to the extent those requests seek information and/or documents in CSX's possession that are publicly available and/or are already in Amtrak's possession, or would require CSX to search for and produce information or documents that are not within CSX's possession, custody, or control.

8. **Production Deadline.** CSX objects as unduly burdensome to the Amtrak request that CSX produce any responsive documents no later than 15 days from the date of service of the Amtrak discovery requests. CSX will promptly produce responsive, non-objectionable materials.

9. **Privilege Log.** CSX objects to Instruction No. 8 as unduly burdensome and inconsistent with STB discovery practice.

10. **Definition of "Identify."** CSX objects as unduly burdensome to the definition of "Identify," when used in relation to a document. CSX will identify documents sufficiently for Amtrak to locate and recognize the document.

11. CSX incorporates these General Objections into each Objection below as if fully set forth therein.

OBJECTIONS AND RESPONSES TO AMTRAK INTERROGATORIES

Amtrak Interrogatory No. 1: “Identify each person who supplied information for, who was consulted in connection with, or who participated in preparation of the answers to these interrogatories. As to each such person, identify the answer(s) for (or in which) he or she was consulted, supplied information, or participated.”

CSX Response: CSX objects to this request on the grounds that it is overbroad and unduly burdensome. CSX further objects to this request on the ground that it calls for information subject to the attorney work product doctrine and the attorney-client privilege.

Amtrak Interrogatory No. 2: “Describe in detail all studies or analyses that have been performed to determine whether additional track capacity or other investments are required or desirable, or should be sought, in conjunction with or to accommodate the operation of the NSR Doublestack Trains on CSX’s Berkshire Subdivision and Boston Subdivision. Include in Your description (i) the names of the entities or persons who performed the studies or analyses; (ii) the dates on which the studies or analyses began; (iii) the dates on which the studies or analyses were completed; (iv) the cost of the studies or analyses; (v) the conclusions of the studies or analyses; and (vi) all actions that CSX has taken or is considering taking as a result of the studies or analyses, including but not limited to making track capacity or other investments on the Berkshire Subdivision or Boston Subdivision, or seeking funding from NSR, governmental entities, or others for track capacity or other investments.”

CSX Response: CSX objects to this request on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. CSX further objects to this request on the ground that it does not seek discoverable facts but rather seeks information about CSX’s future plans. Subject to these objections and without waiving the General Responses and General Objections set forth above, CSX states that no such studies or analyses were performed.

Amtrak Interrogatory No. 3: “Identify all improvements to increase track capacity that CSX plans to make, or is considering making, on the Berkshire Subdivision or Boston Subdivision in conjunction with or to accommodate the operation of the NSR Doublestack Trains. Include in Your description (i) when the project(s) will begin as well as when it will be completed; (ii) the location(s) by mileposts where the improvements will be made; (iii) the type of improvement; (iv) when the work to install the improvement will be completed; (v) the projected cost of the improvement; (vi) the projected benefits resulting from the improvement; and (vii) who will be funding the cost of the improvement, and if more than one entity how the projected cost will be allocated among them.”

CSX Response: CSX objects to this request on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. CSX further objects to this request on the ground that it does not seek discoverable facts but rather seeks information about CSX’s future plans. Subject to these objections and without waiving the General Responses and General Objections set forth above, CSX states that CSX is not planning to make or considering making any such improvements.

Amtrak Interrogatory No. 4: *“Identify all grants or other funding (other than the grants awarded or proposed grant applications identified on pages 35-36 of the Significant Transaction Operating Plan [pdf pages 258-259 of the Amended Application]) that CSX has received over the past 10 years, expect to receive, are applying for, have proposed applying for, or plan to seek or are considering seeking from federal, state or local governmental entities, body politics or other publicly-funded entities for projects for capital improvements on the CSX lines over which the NS Doublestack Trains would operate. Include in Your description (i) the name of the project; (ii) the project’s location; (iii) the total project cost or projected cost; and (iv) who funded or will be funding the cost of the project, and if more than one entity how the cost or the projected cost was or will be allocated among them.”*

CSX Response: CSX objects to this request on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and that it is overbroad and unduly burdensome.

Amtrak Interrogatory No. 5: *“Describe in detail how any studies or analyses that have been performed to analyze or in conjunction with the Proposed Transaction incorporated existing or proposed Amtrak or other passenger train operations, and what level of Amtrak or other passenger train performance such studies or analyses determined would result from the operation of the NSR Doublestack Trains.”*

CSX Response: CSX objects to this request on the grounds that it is overbroad and vague in that it is not clear how a “level of Amtrak or other passenger train performance . . . would result from the operation of the NSR Doublestack Trains.” CSX further objects to this request on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection and without waiving the General Responses and General Objections set forth above, CSX states that, pursuant to 49 C.F.R. § 1180.8(b)(2), in connection with CSX’s preparation of the operating plan submitted with the Amended Application, CSX analyzed any potential impacts on Amtrak and passenger train services operated over the lines of the applicant carriers.

Amtrak Interrogatory No. 6: *“State whether the operation of the NS Doublestack Trains over CSX’s Berkshire Subdivision or Boston Subdivision will reduce the track capacity currently available for operation of additional trains over those subdivisions. If the answer is yes, describe in detail the impact of the operation of the NS Doublestack Trains on track capacity, and the improvements or other investments that would be required to provide the track capacity for additional trains that is available today.”*

CSX Response: CSX objects to this request on the ground that it is overbroad and vague. CSX further objects to this request on the ground that the development of the requested data would require a special study. Subject to this objection and without waiving the General Responses and General Objections set forth above, CSX refers Amtrak to the response to Amtrak Interrogatory No. 2.

Amtrak Interrogatory No. 7: *“Describe in detail how Amtrak service operating on the PAR System ‘will benefit from the more consistent and reliable network that will result from the Proposed Transaction.’ (Page 36 of the Significant Transaction Operating Plan [pdf page 259 of*

the Amended Application]). Include in the description the specific metrics CSX proposes for use to determine whether this projected benefit of the Proposed Transaction has been realized, what level of improvement CSX projects these metrics will show, the period of time for which CSX will agree the STB should retain jurisdiction to monitor performance following implementation of the Proposed Transaction, and the actions CSX (i) will agree to take, and (ii) will agree that the STB should retain jurisdiction to order CSX to take, in the event that the STB determines that that the projected benefits to Amtrak services operating over the PAR System have not been achieved.”

CSX Response: CSX objects to this request on the grounds that it is unduly burdensome and that the development of the requested information would require a special study. CSX further objects to this request on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. CSX further objects to this request on the ground that it does not seek discoverable facts but rather seeks information about CSX’s future plans. Subject to these objections and without waiving the General Responses and General Objections set forth above, CSX refers Amtrak to pages 25 through 27 of the Operating Plan submitted with the Amended Application, which describes how CSXT intends to operate the PAR System.

Amtrak Interrogatory No. 8: *“Describe in detail the actions CSX intends to take to ensure that the performance of Amtrak trains operating over CSX’s Berkshire Subdivision and Boston Subdivision is not adversely impacted by the up to 27% increase in freight train operations that will result from the operation of the NSR Doublestack Trains over those subdivisions. (Pages 12-17 of the Significant Transaction Operating Plan [pdf pages 230-235 of the Amended Application]). Include in the description the specific metrics CSX proposes for use to determine whether the Amtrak trains’ performance is adversely impacted, the period of time for which CSX will agree the STB should retain jurisdiction to monitor performance following implementation of the Proposed Transaction, and the actions CSX (i) will agree to take, and (ii) will agree that the STB should retain jurisdiction to take, in the event that the STB determines that performance of the Amtrak trains has been adversely impacted by the increase in freight train operations.”*

CSX Response: CSX objects to this request on the ground that it is unduly burdensome and that the development of the requested information would require a special study. CSX further objects to this request on the ground that it does not seek discoverable facts but rather seeks information about CSX’s future plans. Subject to these objections and without waiving the General Responses and General Objections set forth above, CSX states that passenger trains will continue to be the highest priority train operated on these CSXT lines.

Amtrak Interrogatory No. 9: *“Describe in detail the actions CSX intends to take to ensure that there will be a ‘seamless transition . . . after the Proposed Transaction’ with respect to Amtrak service operating over the PAR System (page 18 of the Amended Verified Statement of Mr. Sean Pelkey [pdf page 284 of the Amended Application]). Include in the description the actions, including capital investments or changes in operational practices, that CSX (i) will agree to take, and (ii) will agree that the STB should retain jurisdiction to order CSX to take, in the event that the STB determines that that the transition has not been seamless.”*

CSX Response: CSX objects to this request on the grounds that it is overbroad and unduly burdensome and that the development of the requested information would require a special study. CSX further objects to this request on the ground that it does not seek discoverable facts but rather seeks information about CSX's future plans. Subject to these objections and without waiving the General Responses and General Objections set forth above, (1) CSX states that the PAR System will continue to operate as it does today immediately after CSX acquires control of Springfield Terminal, and that CSX intends to merge Springfield Terminal into CSXT at a later date, and (2) CSX refers Amtrak to the Operating Plan submitted with the Amended Application, which describes in detail CSX's plans with respect to integration of the PAR System into the CSXT network.

***Amtrak Interrogatory No. 10:** "State whether (i) CSX will agree to file in the public docket, simultaneously with its responses to these interrogatories, the 'reasonable schedule and operating plan' for the NSR Doublestack Trains referenced in the Application at page 18 of the Amended Verified Statement of Mr. Sean Pelkey [pdf page 284 of the Amended Application] so that other parties will have the opportunity to address it in their Comments, or (ii) if that schedule has not been agreed upon with NSR as of that time, CSX will agree that the STB should require that it be filed in the public docket when an agreement with NSR has been reached, and provide other parties an opportunity to comment on it before the STB issues a decision in this proceeding."*

CSX Response: CSX objects to this request on the ground that it does not seek discoverable facts but rather seeks information about CSX's future plans. CSX further objects to this request on the grounds that it is overbroad and unduly burdensome and that the development of the requested information would require a special study. CSX further objects to this request on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and without waiving the General Responses and General Objections set forth above, CSXT states that it will provide further information with the revised application that CSXT expects to file in this proceeding.

OBJECTIONS AND RESPONSES TO AMTRAK DOCUMENT REQUESTS

***Amtrak Document Request No. 1:** "Current employee timetables for CSX's Berkshire Subdivision and Boston Subdivision."*

CSX Response: CSX objects to this request on the ground that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. Subject to this objection and without waiving the General Responses and General Objections set forth above, CSX will produce responsive documents that are reasonably available.

***Amtrak Document Request No. 2:** "Historical (2015-2020) MOW work data for the CSX Berkshire Subdivision and Boston Subdivisions for any MOW projects that resulted in a track or line closure of more than two hours duration, including (i) the start and end dates of each project, (ii) the starting and ending mileposts of each project, (iii) the type of work done, and (iv) the budget for such work."*

CSX Response: CSX objects to this request on the ground that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. CSX further objects to this request on the ground that the development of the requested data would require a special study. Subject to this objection and without waiving the General Responses and General Objections set forth above, CSX will produce responsive documents, if any, that are reasonably available.

Amtrak Document Request No. 3: “*Historical (2015-2020) slow order data for the CSX Berkshire Subdivision and Boston Subdivisions, including (i) the start and end dates of each slow order, (ii) the starting and ending mileposts of each slow order, and (iii) the speed reduction for each slow order.*”

CSX Response: CSX objects to this request on the ground that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. CSX further objects to this request on the ground that the development of the requested data would require a special study. Subject to this objection and without waiving the General Responses and General Objections set forth above, CSX will produce responsive documents, if any, that are reasonably available.

Amtrak Document Request No. 4: “*Current track charts for CSX’s Berkshire Subdivision and Boston Subdivision.*”

CSX Response: CSX objects to this request on the ground that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. Subject to this objection and without waiving the General Responses and General Objections set forth above, CSX will produce responsive documents that are reasonably available.

Amtrak Document Request No. 5: “*Schedules for all CSX trains operating over CSX’s Berkshire Subdivision or Boston Subdivision, including existing time/distance diagrams (stringlines) for these trains for a representative one-week period in 2018, 2019 and 2020 (identical week).*”

CSX Response: CSX objects to this request on the ground that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. CSX further objects to this request on the ground that the development of the requested data would require a special study.

Amtrak Document Request No. 6: “*All documents related to the capacity studies referenced in CSX’s responses to Interrogatory No. 2.*”

CSX Response: CSX refers Amtrak to the CSX response to Interrogatory No. 2.

Amtrak Document Request No. 7: “*All documents referencing, evaluating or pertaining to the impact of the NSR Doublestack Trains on Amtrak or CSX operations over CSX’s Berkshire Subdivision and Boston Subdivision.*”

CSX Response: CSX objects to this request on the ground that it is unduly burdensome and that the development of the requested information would require a special study. CSX further objects to this request on the ground that it is overbroad and ambiguous in seeking documents “pertaining to” the capacity on CSX’s Berkshire Subdivision and Boston Subdivision. CSX further objects to this request on the ground that it does not seek discoverable facts but rather seeks information about CSX’s future plans.

Amtrak Document Request No. 8: “All documents referencing, evaluating or pertaining to whether CSX’s Berkshire Subdivision and Boston Subdivision have capacity to accommodate additional train operations.”

CSX Response: CSX objects to this request on the ground that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. CSX further objects to this request on the ground that it is overbroad and ambiguous in seeking documents “pertaining to” the capacity on CSX’s Berkshire Subdivision and Boston Subdivision. CSX further objects to this request on the ground that it is overbroad to the extent it does not contain any limit on the time period covered by the request. Subject to these objections and without waiving the General Responses and General Objections set forth above, CSX refers to the response to Amtrak Interrogatory No. 2.

Amtrak Document Request No. 9: “All documents constituting, referencing or pertaining to the schedules of, or development of the schedules for, the NSR Doublestack Trains, including all communications between NSR and CSX pertaining to or referencing those schedules.”

CSX Response: CSX objects to this request on the ground that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. CSX further objects to this request on the ground that it is overbroad and ambiguous in seeking documents “pertaining to” the referenced schedules or development of schedules. Subject to these objections and without waiving the General Responses and General Objections set forth above, CSX refers to the response to Amtrak Interrogatory No. 10.

Amtrak Document Request No. 10: “All documents pertaining to the train profile (at a minimum, train length, weight, HP/ton) assumptions of the NSR Doublestack Trains, including all communications between NSR and CSX pertaining to those train profiles.”

CSX Response: CSX objects to this request on the ground that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. CSX further objects to this request on the ground that it is overbroad and ambiguous in seeking documents “pertaining to” the referenced train profile assumptions. CSX further objects to this request on work product and privilege grounds to the extent it seeks the production of communications relating to information gathered by CSX to respond to information requested by the STB. Subject to these objections and without waiving the General Responses and General Objections set forth above, CSX refers Amtrak to Environmental Comment EI-30550 in Finance Docket No. 36472 (CSX letter to STB Office of Environmental Analysis).

***Amtrak Document Request No. 11:** “All studies, analyses or other documents supporting the statement in the Amended Application that ‘[P]assenger service . . . will benefit from the more consistent and reliable network that will result from the Proposed Transaction.’ (Page 36 of the Significant Transaction Operating Plan [pdf page 259 of the Amended Application]).”*

CSX Response: CSX objects to this request on the ground that it is overbroad and ambiguous in seeking documents “supporting” the referenced statement. Subject to this objection and without waiving the General Responses and General Objections set forth above, CSX refers to its response to Amtrak Interrogatory No. 7 on the development of an Operating Plan in support of its Amended Application. CSX further states that no other specific studies or analyses were conducted to support the referenced statement.

***Amtrak Document Request No. 12:** “All documents identified in response to the above Interrogatories, and all documents used or consulted in the course of the preparation of Your response to each of those Interrogatories.”*

CSX Response: CSX objects to this request on the ground that it is vague and overbroad to the extent it requests the production of documents used or consulted in the course of the preparation of responses to the Interrogatories. Subject to this objection and without waiving the General Responses and General Objections set forth above, CSX will produce the documents as specifically provided above in the Interrogatory responses.

Respectfully submitted,

/s/ Anthony J. LaRocca

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

Dated: June 1, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 2021, copies of the foregoing Responses and Objections of CSXC and CSXT to First Set of Discovery Requests of Amtrak to CSX have been served by e-mail or by first class mail on all parties of record in this proceeding.

/s/ Sally Mordi

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

June 1, 2021

CERTIFICATE OF SERVICE

I, Sophia Ree, declare under penalty of perjury that the foregoing is true and correct. Pursuant to 49 § 1104.12, I hereby certify that on the 27th of August, 2021 I have caused to be served a copy of the foregoing Comments in Opposition to the Proposed Transaction, upon all parties of record via electronic mail or first class mail.

Executed on: August 27, 2021

By: */s/ Sophia Ree*
Sophia Ree