

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

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CANADIAN PACIFIC'S COMMENTS

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CANADIAN PACIFIC’S COMMENTS

In accordance with Decision No. 4 in this proceeding, Canadian Pacific Railway Company Limited and its U.S. railroad subsidiaries (collectively “Canadian Pacific” or “CP”),¹ offer the following comments on the Revised Application and the Related Transactions (collectively the “Transaction”).² The facts relating to CP set forth in these Comments are verified by James Clements, CP’s Senior Vice-President Strategic Planning and Technology Transformation.

¹ Canadian Pacific’s U.S. rail carrier subsidiaries are Canadian Pacific Railroad Company, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc.

² CP’s Comments embrace the primary CSX/Pan Am control docket (Finance Docket No. 36472) as well as the five sub-dockets, all of which are “Related Transactions” as set forth in Decision No. 4 herein: *Norfolk Southern Ry. – Trackage Rights Exemption – CSX Transportation, Inc.*, Finance Docket No. 36472 (Sub-No. 1); *Norfolk Southern Ry.– Trackage Rights Exemption – Providence & Worcester R.R.*, Finance Docket No. 36472 (Sub-No. 2); *Norfolk Southern Ry. – Trackage Rights Exemption – Boston & Maine Corp.*, Finance Docket No. 36472 (Sub-No. 3); *Norfolk Southern Ry. – Trackage Rights Exemption – Pan Am Southern LLC*, Finance Docket No. 36472 (Sub-No. 4); and *Pittsburg & Shawmut R.R., LLC d/b/a Berkshire & Eastern R.R. – Operation Exemption – Pan Am Southern LLC & Springfield Terminal Ry.*, Finance Docket No. 36472 (Sub-No. 5).

INTRODUCTION

CP is keenly interested in the health and competitive vigor of the rail network serving the New England region, in which CP is an important participant. CP serves New England via its own lines to the west and north – specifically, via CP’s D&H line to Albany, connecting with Vermont Railway at Whitehall, NY; Pan Am Southern (“PAS”) at Mechanicville, NY; Norfolk Southern at Schenectady, NY;³ and CSX at Albany; and via CP’s CMQ line between Quebec and Maine, connecting to Pan Am Railways (“PAR”) at Northern Maine Junction, ME. CP handles thousands of carloads annually moving to and from PAS and PAR.

In order to access shippers in the heart of New England from the west, CP and its shippers depend critically on the roughly parallel routes of CSX and PAS from Upstate New York to eastern Massachusetts: CSX’s route from Albany, which CSX refers to as the “Southern Route,” and PAS’s former Boston & Maine mainline, which crosses the Berkshire Mountains via the 146-year-old, 4.7-mile Hoosac Tunnel (and which we refer to herein as the “Hoosac Tunnel Route”).⁴ These CSX and PAS routes are head-to-head competitive alternatives, and they are the only viable rail routes into New England from the west. The vast majority of CP’s traffic to and from New England moves via Mechanicville (the “Mechanicville Gateway”) and PAS’s Hoosac Tunnel Route.

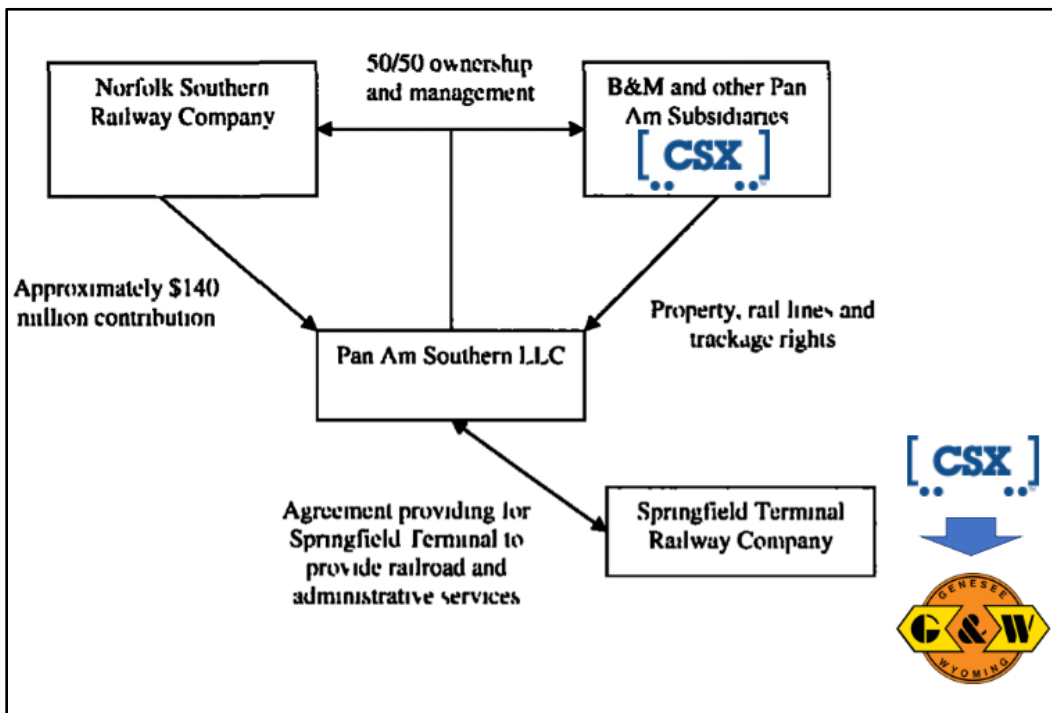
Without competition preserving conditions, the proposed Transaction would permanently alter this landscape, with potentially adverse long-term consequences for rail capacity and

³ For traffic moving over PAS, physical interchange between CP and PAS takes place at CP’s Mohawk Yard in East Glensville, NY, and physical interchange between CP and NS takes place in Saratoga Springs/Ballston Spa, NY.

⁴ The efficient Boston & Maine route from Boston to Upstate New York via western Massachusetts has long been known as the Hoosac Tunnel Route, as shown in Appendix A. During World War II the tunnel was of such strategic importance that it was patrolled to guard against sabotage.

competition. By acquiring Pan Am, CSX would simultaneously achieve control of the railroad that operates PAS (Springfield Terminal, a Pan Am subsidiary) and acquire a 50 percent interest in PAS itself. The restructuring of PAS resulting from CSX’s acquisition of Pan Am is shown in Figure 1 below, which is based on the diagram submitted by Pan Am and Norfolk Southern (“NS”) when they sought Board approval to create PAS.

FIGURE 1⁵
PAN AM SOUTHERN LLC STRUCTURE POST CSX CONTROL



CSX appears to acknowledge that without remedies these changes would pose serious and immediate threats to competition, and it attempts to remedy them via the complex agreements with NS and Genesee & Wyoming (“G&W”) that are presented to the Board for approval or exemption in the Related Transactions. Absent effective remedies, the changes

⁵ Source: *Norfolk Southern Ry., Pan Am Railways Inc, et al. — Joint Control & Operating/Pooling Agreements – Pan Am Southern LLC*, Finance Docket No. 35147, Application for Approval of Joint Control of Pan Am Southern LLC and Operating/Pooling Agreement (filed May 30, 2008) at 6.

REDACTED PUBLIC RECORD VERSION

wrought by the Transaction would in fact be far-reaching, by eliminating or significantly diminishing the long-term viability of the competitive Hoosac Tunnel Route. Today PAS is owned by NS and Pan Am, each of which has a strong and undivided incentive to support the viability of the PAS route in competition with CSX. With the Transaction and the related remedies for which CSX, Pan Am, NS, and G&W (collectively, “Transaction Participants”) seek approval or exemption, by contrast, the following changes will occur:

- CSX will become the one-half owner of PAS and have incentives to degrade PAS’s competition against CSX single-line routes. CSX will have a veto over capital maintenance and other investments in the viability of the competing PAS route;
- A significant portion of the NS traffic that supports the PAS route will be diverted to the CSX route under the CSX-NS settlement agreement, reducing NS’s incentives to support the continued viability of the Hoosac Tunnel Route;
- The new single-line CSX routes would, absent conditions requiring otherwise, certainly divert additional freight traffic now exchanged between PAR and PAS to CSX single-line routes, bypassing PAS;
- Those diversions may be attenuated somewhat by CSX’s “transitional” commitment in the NS-CSX agreement to move certain traffic over PAS rather than over CSX’s own route, but once that transitional period expires, that traffic too would disappear;
- Limitations on PAR’s trackage rights in the Ayer area that had limited the volume of PAR-CSX interchange (and ensured that traffic would move over PAS) will be eliminated, reinforcing the potential for traffic to shift away from PAS to CSX single-line routes;
- CSX’s contractual rate commitments in the NS-CSX settlement agreement for PAR traffic interchanged with PAS will disappear after a “transitional” period;
- Unlike PAS’s current operator (Springfield Terminal), the new operator – G&W’s Berkshire & Eastern (“B&E”) subsidiary – will have conflicting incentives given G&W’s control over three other New England railroads, New England Central, St. Lawrence & Atlantic, and Providence & Worcester; and
- Like Springfield Terminal, B&E which will have “pricing” authority on PAS, but unlike Springfield Terminal B&E will have no financial incentive to win traffic to

REDACTED PUBLIC RECORD VERSION

the PAS line beyond its contractual obligation to price “for the benefit of PAS (and its owners).”

These structural changes resulting from the Transaction will permanently alter the New England rail map, with long-term risks to the continued viability of the only real competitive option to CSX other than the one train per day in each direction that CSX has allowed NS to operate over the CSX route. The Hoosac Tunnel Route is already a relatively light-density line that is vulnerable to catastrophic disruption were anything to happen to the Hoosac Tunnel, as happened in 2020 when the line was shut down for several months as a result of a partial wall collapse. Today, PAS and its owners have strong incentives make the investments necessary to reopen the line and preserve its essential competitive role. The same may not be true if the Transaction is approved and consummated, absent conditions imposed by the Board.

As we explain below, the Board should formally condition the Transaction to preserve the competition Transaction Participants acknowledge and promise will not be adversely affected. The Board should act to ensure that Transaction Participants may pursue the procompetitive benefits they claim – new single-line options along with the potential efficiencies of NS’s re-routed intermodal trains – while safeguarding against the adverse impacts that the Transaction’s fundamental attributes would otherwise foreshadow: the long-term decline and possible demise of the competition that efficient through service over the Hoosac Tunnel Route enables.

Specifically, CP urges the Board to adopt the following conditions (as further described in Section II below):

- Hold the Transaction Participants to all of their representations, including representations regarding the effects of the Transaction that are within their ability to control;

REDACTED PUBLIC RECORD VERSION

- Require that the Transaction Participants keep open on commercially reasonable terms all gateways for the movement of traffic via the Hoosac Tunnel Route to PAS's western gateways, *including PAS's Mechanicville Gateway with CP*;
- Require that PAS and its owners support sufficient spending on maintenance and infrastructure on the Hoosac Tunnel Route to maintain the line's physical condition at or above pre-Transaction levels;
- Require that PAS provide service levels (frequency, transit times, and consistency) that are at least comparable to those offered for traffic interchanged with CP or exchanged with NS at the Mechanicville Gateway pre-Transaction; and
- Retain jurisdiction to oversee the impact of the Transaction on the Hoosac Tunnel Route, and specifically retain the authority to impose additional conditions, including requiring specific investments or other measures, as may prove necessary to protect the viability of the Route.

The Transaction marks a fundamental restructuring of the competitive incentives relating to the entirety of the New England rail map. The Board should proceed with great caution here, and condition the Transaction in a way that preserves the long-run incentives of the various parties to invest in and operate PAS's Hoosac Tunnel Route as a no-less viable competitive alternative than it would have been absent the Transaction.

DISCUSSION

I. TRANSACTION RAISES MATERIAL CONCERNS ABOUT THE LONG-RUN PRESERVATION OF COMPETITIVE RAIL ACCESS TO NEW ENGLAND FROM THE WEST

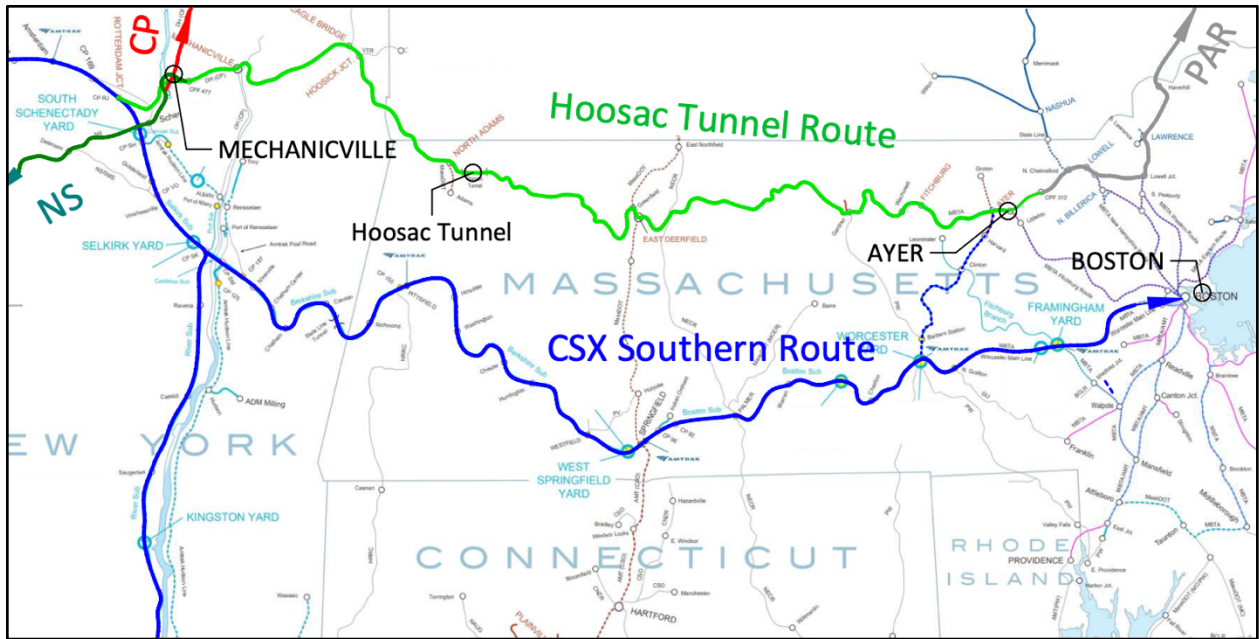
Although on its face some features of CSX's acquisition of Pan Am Railway are akin to an end-to-end railroad combination, in fact the Transaction is quite complex and will have profound impacts for the entire New England rail map. CSX's acquisition of Pan Am's 50 percent ownership of PAS and Springfield Terminal's role as PAS's operator will, if not adequately remedied, disrupt the competition that PAS's former Boston & Maine Hoosac Tunnel Route has provided to CSX's former Boston & Albany "Southern Route" from Albany to Boston.

A. The PAS Hoosac Tunnel Route Is the Only Viable Competitive Alternative to CSX for Most New England Rail Traffic

When NS joined with Pan Am to form PAS, that transaction was heralded as “strengthen[ing] the existing Norfolk Southern/Springfield Terminal competitive alternative to the single-line service of CSXT into the Boston area by making PAS a more efficient competitor.” *Norfolk Southern Ry., Pan Am Rys, Inc., et al. – Joint Control & Operating/Pooling Agreements – Pan Am Southern LLC (“Pan Am Southern Creation”)*, Finance Docket No. 35147 (STB served Mar. 10, 2009) at 2-3. When CSX first announced its plan to acquire Pan Am, NS raised alarm about the significant competitive implications of CSX’s acquisition. *See* Finance Docket No. 35147, NS Letter (filed Nov. 6, 2020).⁶ And indeed the head-to-head competitive role those two routes play is clear from an examination of the map set forth as Figure 2 below.

⁶ Similarly, MassDOT filed comments pointing out that PAS has been “critical to offsetting CSXT’s position as the only Class I railroad in New England by affording Norfolk Southern Railway Company (‘NSR’) (which holds the other 50% membership in PAS) a means to compete with CSXT’s predominant position in the region.” MassDOT Notice of Intent (filed Mar. 16, 2021) at 2.

FIGURE 2
HEAD-TO-HEAD COMPETITION FROM PARALLEL CSX AND PAS ROUTES



CP's own experience participating in rail traffic to/from New England confirms the vital competitive importance of PAS's Hoosac Tunnel Route. That route is the only viable alternative to CSX's Southern Route for rail shipments into and out of New England. No other routes are nearly as efficient for most traffic moving between New England and points west of Albany. The primary theoretical alternatives that bypass the Hoosac Tunnel are (a) Vermont Railway's route from the CP connection at Whitehall, NY to a connection with New England Central ("NECR") at Bellows Falls, thence via NECR to a connection with PAS at Millers Falls, MA; and (b) NECR's line from East Alburgh, VT to Millers Falls. The Vermont Railway-NECR multi-line route would be considerably slower and less capable than the PAS Hoosac Tunnel Route – in particular, it is not capable of handling the 286,000 pound axle weights demanded by

most shippers.⁷ The NECR-Millers Falls multi-line route does not connect directly with CP's rail network. Because of these limitations, CP moved virtually zero traffic to/from PAR lines moves via these theoretical alternative routes.⁸

CSX's Amended Application recognizes the importance of preserving the competition provided by the PAS Hoosac Tunnel Route. CSX reached an extensive settlement agreement with NS to overcome NS's commercial and competitive concerns and thereby to remedy the competitive harms associated with CSX's control of Pan Am. Responding to NS's concerns, CSX emphasizes that its various contractual commitments would:

“eliminate[] any potential for competitive harm that would occur if CSXT, through its acquisition of an interest in PAS or its acquisition of the PAS operator, were able to exercise control over the price of access to New England over PAS or otherwise prevent rail carriers from accessing New England through PAS. There are currently two direct routes to and from New England through upstate New York – PAS and CSXT's mainline route described earlier. Through a series of agreements with NSR and GWI, *CSXT has structured the Proposed Transaction to eliminate any risk of competitive harm relating to these two roughly parallel routes.*”

CSX App., Exh 12, Market Analysis at 16, APP-288 (emphasis added).

B. The Transaction Will Have Significant Long-Term Implications for the Competitive Viability of the PAS Hoosac Tunnel Route

Without the CSX acquisition, there are strong incentives for PAS to maintain and invest in its Hoosac Tunnel Route, and for PAS to compete hard to win traffic via that route. Those incentives arise from the salient structural features of PAS: it is owned and controlled jointly by

⁷ The Vermont Railway-NECR route from Whitehall to Millers Falls incorporates a significant amount of Class 2 track rated for 25 miles-per-hour maximum speed, and is limited to 263,000 pound axle loadings.

⁸ For completeness, rail traffic could theoretically be routed to/from New England via (a) the St. Lawrence & Atlantic line from Sherbrooke, QC to PAR at Danville, ME, which is limited to 263,000 pound axle loadings; or (b) PAR's connection with CMQ at Northern Maine Junction, ME. Particularly for traffic moving between eastern Massachusetts/southern New Hampshire and the west, however, these routes are too circuitous to be competitively viable.

NS and PAR, both of which have strong incentives to compete against CSX for New England rail traffic. And PAS is operated and maintained by a Pan Am subsidiary, which likewise has strong incentives to ensure that the route is able to attract traffic in competition with CSX.

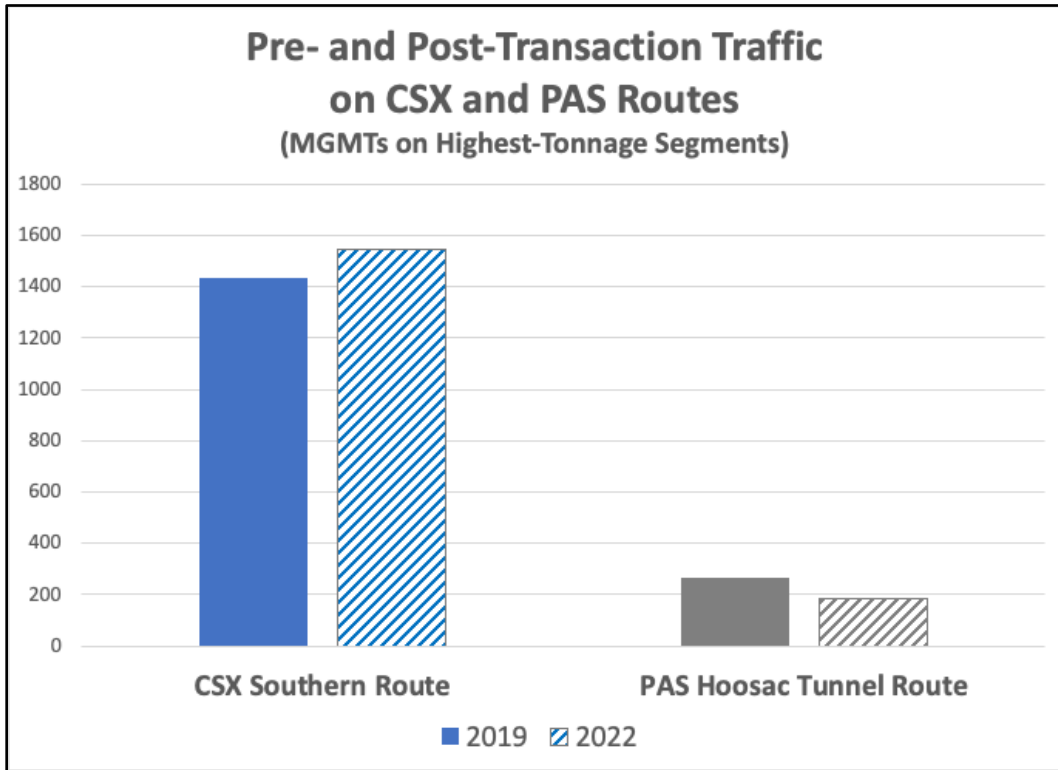
These incentives have led to investments in the PAS route and produced a robust competitive landscape. Though PAS's Hoosac Tunnel Route hosts relatively few daily freight trains, it serves as a vital and unique competitive discipline to CSX, which dominates traffic volumes, as shown in the side-by-side comparison of traffic densities on the two routes in Figure 3 below. The Hoosac Tunnel Route's importance in today's competitive environment has stimulated PAS and its owners to make large ongoing investments in the line's capacity and capabilities. Upon the formation of PAS, NS infused \$87.5 million into PAS's infrastructure, removing long-term slow orders, adding capacity, and improving clearances, all to support improved service on the line.⁹ NS also invested in intermodal facilities at Mechanicville, NY to facilitate the efficient movement of traffic via the Hoosac Tunnel Route.¹⁰ In 2020, when the Hoosac Tunnel suffered a partial wall collapse that shut down operations on the route for several months, PAS and its owners spent millions to reinforce the roof of the tunnel in the area of the collapse. Absent the Transaction, the competitive importance of this route likely would grow, as the Commonwealth of Massachusetts is pursuing a project that would expand clearances in the

⁹ See Finance Docket No. 35147, *Norfolk Southern Ry., Pan Am Railways Inc, et al. — Joint Control & Operating/Pooling Agreements – Pan Am Southern LLC*, Application for Approval of Joint Control of Pan Am Southern LLC and Operating/Pooling Agreement (filed May 30, 2008) at 2.

¹⁰ CSX explains that NS's "Mechanicville facility is located on a strategic route between Chicago and Boston. It is the site of an auto unloading facility and an efficient 'filet and toupee' operation, in which the top containers of Massachusetts-bound double-stack, intermodal trains are removed (*i.e.*, 'filleted') in order to permit the trains to fit through the Hoosac Tunnel. On the return trip, single-stack trains stop in Mechanicville to have containers placed on top, or a 'toupee,' before heading to Chicago." Amended Application, Exh. 13 ("Operating Plan") at 32/APP-330.

Hoosac Tunnel and elsewhere on the line to allow unrestricted movement of double-stack intermodal trains on the line.¹¹

**FIGURE 3
COMPARISON OF TRAFFIC DENSITY ON CSX AND PAS ROUTES¹²**



The Transaction will fundamentally alter this landscape, reducing the long-run incentives to invest in the continued operational and competitive viability of the route. This change arises from several interlocking features of the Transaction, all of which flow directly from the fact that CSX will be acquiring Pan Am and with it both the principal source of interline traffic on PAS’s

¹¹ As recently as this year the Commonwealth of Massachusetts has been actively pursuing funding for a project to expand clearances on the Hoosac Tunnel Route (which it calls the Patriot Corridor to allow double-stack intermodal operations through the tunnel on PAS’s route to Ayer. See Commonwealth of Massachusetts, “*The Patriot Corridor Double-Stack Clearance Initiative Project*” (Winter 2021) (Exhibit 1 hereto).

¹² Source: Amended Application, Exh. 4, Attachment 3 (“Chart Reflecting Traffic Changes for the Northern and Southern Routes”), APP-213.

Hoosac Tunnel Route and a 50 percent ownership interest in PAS itself. The commitments CSX have made to remedy the concerns initially raised by NS provide some short-term relief, but do not adequately deal with the long-run implications of the Transaction for the viability of this vital artery of commerce serving New England.

First, the settlement with NS provides a variety of short-term protections for traffic volumes on the Hoosac Tunnel route, but will also shift away from that route the most important traffic of all: NS's premium intermodal and automotive traffic, which will have a new home on CSX's Southern Route.¹³ And in the process of reaching agreement with CSX, NS agreed to allow CSX to remain the half owner of PAS, with veto rights over capital investments on the line that NS can overcome only by acquiring CSX's half-interest for a large cash outlay that might not be warranted given PAS's diminished traffic potential and strategic importance to NS.¹⁴ And of course nothing about NS's settlement prevents the natural and inevitable shift of substantial volumes of carload traffic away from PAR-PAS routes (the equivalent of a single-line route today given Springfield Terminal's operation of both railroads) to new single-line CSX routes.

Second, NS and CSX (as the new co-owners of PAS) have agreed to substitute an affiliate of Genesee & Wyoming (Berkshire & Eastern or "B&E") as the contract operator of all

¹³ NS's Notice of Exemption states that NS's trackage rights will "allow NS's movement of one train pair (that is one train in each direction) carrying intermodal and automotive vehicles traffic per day no longer than 9,000-feet plus locomotives meeting the clearance requirements of CSX, not exceeding the siding capacity between CSX's line between Schenectady and Harvard, and sufficiently powered to maintain maximum track speed on the Subject Trackage between approximately Voorheesville, NY, and Worcester, MA." *Norfolk Southern Ry. – Trackage Rights Exemption – CSX Transportation, Inc.*, Finance Docket No. 36472 (Sub-No. 1), Notice of Exemption (filed Feb. 25, 2021) at 3-4.



¹⁴ NS and CSX have agreed that were NS to acquire CSX's half-interest in PAS { }
Amended Application, Pelkey V.S., CSX-NSR Settlement Agreement at § II.2.b. ("Ownership of PAS") at 2/APP-433.

of PAS. Genesee & Wyoming already owns and operates three important regional railroads in New England: NECR, which has a line from New London, CT through central Massachusetts to the Canadian border at East Alburgh, VT (north of Burlington); Providence & Worcester, which operates lines across much of Connecticut, Rhode Island, and eastern Massachusetts; and St. Lawrence & Atlantic, which has a line from Portland, ME to connections with CN and CP in Quebec. Berkshire & Eastern will be contractually bound to PAS to operate and price services on PAS, but it will not have the stake that PAS had in the long-term future of the Hoosac Tunnel Route.

Taken as a whole, the Transaction brings together as parties seeking relief from the Board (*i.e.*, the Transaction Participants) the entities that are responsible for nearly the entirety of rail freight operations across all of New England, as shown in Figure 4 below (which marks in blue the lines of Transaction Participants). This scope serves to reemphasize the importance of the Board acting in this proceeding to ensure that the Transaction does not lead to competitive harm, particularly via the long term decline or demise of the competitive viability of the Hoosac Tunnel Route.

1. *The Transaction Will Strip the Line of a Significant Portion of the Overhead Traffic that Supports Investment in Existing Service Levels*

The Transaction – unless remedied – would threaten the long-run viability of the Hoosac Tunnel Route by removing substantial volumes of remunerative traffic from the line. First, the trackage rights that CSX is granting NS over CSX’s Southern Route (accompanied by investments in a more efficient connection between NS and CSX at Voorheesville, NY) will shift away from the PAS Hoosac Tunnel Route NS’s two premium intermodal/automotive trains a day (one in each direction). *See* note 13, above.

Second, without these trains, the continued viability of the Hoosac Tunnel Route would be dependent on PAS’s manifest traffic, about {} of which (or approximately {} carloads in 2019) is overhead traffic to/from PAR lines that would be highly susceptible to diversion to new CSX single-line routes.¹⁵ If CSX is correct about the improved single-line services it will offer to PAR shippers, the Transaction would lead over time to the diversion of substantial volumes of manifest traffic away from the Hoosac Tunnel Route.¹⁶ Indeed, CSX also touts the fact that changes to trackage rights restrictions in the vicinity of Ayer

¹⁵ Amended Application, Exh. 12 (“Market Analysis”) at 9-10/APP-281 to -82.

¹⁶ CP agrees with CSX’s assessment regarding the benefits of single-line service:

“End-to-end mergers allow railroads to improve the efficiency of their networks and make operational improvements that translate into higher-quality service for shippers. As explained by Dr. Reishus, such rail mergers create new single line service, which is widely recognized by shippers as a more reliable and higher-quality alternative to interline service. End-to-end rail mergers such as this one also often result in operational efficiencies – in areas such as car handling, scheduling, customer service, and coordination across the network – that benefit shippers. Mr. Boychuk explains how the operational efficiencies will benefit New England rail shippers. Further, a rail merger that creates an improved – and thus more competitive – rail alternative can also put competitive pressure on competing rail carriers to improve performance and can strengthen rail as a competitor with other modes of transportation.”

Application, Exh. 12 (“Market Analysis”) at 13/APP-284.

will open up more capacity for traffic to flow from former-PAR lines onto CSX's single-line route instead of onto the PAS.¹⁷

The Amended Application's traffic diversion analysis confirms that – even without counting potential manifest diversions – there would be a significant reduction in traffic across PAS's Hoosac Tunnel Route, which already pales in traffic density in comparison to CSX's Southern Route, as shown in Figure 3 above. CSX's analysis took account of only two traffic shifts: (a) the intermodal/automotive trains moving to the Southern Route and (b) CSX's transitional commitment to route certain CSX traffic over the PAS route instead of CSX's own lines.¹⁸ The net impact of these shifts is significant. For example, the North Adams-Greenfield segment (where the Hoosac Tunnel is located) saw 263 million gross ton miles in 2019 and is forecast to handle only 183 MGTMs in 2022, a 31 percent reduction. This likely understates the revenue impact of the shift, given that the premium traffic is likely both lighter in weight and more remunerative than the average of all carload traffic.

Yet CSX's diversion forecasts do not begin to take account of the long-run implications of an unremedied Transaction. CSX's "transitional" commitment to shift traffic *to the PAS route* added 12 MGTMs to CSX's 2022 forecasts, but that traffic will eventually go away, implying

¹⁷ See Amended Application, Exh. 13 ("Operating Plan") at 45/APP-343; *id.* Huneke V.S. at 7-10/APP-676 to -79.

¹⁸ CSX explains that its agreement with NS "provides that CSXT will interchange some traffic that is local to Ayer, MA, with PAS at Rotterdam, NY. This traffic currently moves on the CSXT lines that will be used by the NSR intermodal/automotive train but it will move in the future over PAS." However, that transitional commitment expires {{REDACTED}} See Amended Application, Pelkey V.S., CSX-NSR Settlement Agreement at § IX ("Ayer Switching District") at 6/APP-436 ({{REDACTED}}); see also *id.*, Exh. 4 ("Environmental Matters") at 2/APP-195 ("CSXT will interchange certain carload traffic moving to/from Ayer shippers at Rotterdam, NY to run over the Northern Route [*i.e.*, PAS] for a transitional period. This traffic currently moves on the Southern Route through Worcester, MA.").

that the steady-state diversions on the North Adams-Greenfield segment would be at least 35 percent.¹⁹

More fundamentally, CSX's traffic analysis forecasts that *zero* of the PAR traffic moving across the PAS route to/from western connections like CP and NS would divert to CSX single-line routes. We know this because CSX is quite up-front about it. The Supplemental Verified Statement of Mark Wallace, filed just last week, contends that the Transaction is "not expected to result in any significant changes in rail operations" other than the specific changes already reflected in the environmental exhibit (the intermodal rerouting and the transitional shift of certain CSX traffic).²⁰ Though Mr. Wallace reconfirms that the "conversion of interline movements to single-line movements will result in improved operations," he suggests that, "[f]rom a marketing perspective," this will allow it only to "support rail customers' organic traffic growth as the economy in New England grows, and to better compete with trucks."²¹

In short, by forecasting no diversions of manifest traffic away from PAS, CSX is suggesting that its new single-line services *will not take rail traffic away from existing rail alternatives – i.e., the Hoosac Tunnel Route*. This can be seen as plausible only in the context of CSX's broader commitments (to the Board, the public, and NS) that the Transaction will fully preserve the competitive role of the Hoosac Tunnel Route in winning these traffic opportunities.

¹⁹ CSX explains that this traffic shows up on the CSX Rotterdam-Mechanicville segment, where there are short run ("transitional") traffic increases of 12 MGTMs. Amended Application, Exh. 4 ("Environmental Matters") at 2, 3/APP-195 to -96 & Attachment 3/APP-213. Without those 12 MGTMs on the North Adams-Greenfield segment, that segment would see a reduction of 92 MGMTs, or 35 percent.

²⁰ CSXT/PAR-24, Supplemental Verified Statement of Mark Wallace (Aug. 19, 2021) (Wallace S.V.S.) at 4-5; *see also id.* at 10, 12, 13.

²¹ *Id.* at 5.

One reflection of that undertaking is the set of very specific “transitional” commitments contained in the NS-CSX settlement agreement, which are designed to prop up traffic levels on PAS over the short run but disappear after a specified period of {{[REDACTED]}}. That agreement spells out CSX’s transitional obligation to shift certain traffic from the CSX Southern Route to PAS (noted above), as well as CSX’s transitional rate commitments CSX makes to NS for PAR traffic interchanged at Ayer moving beyond PAS to NS and other carriers.²²

Just as significant are the goals that CSX makes clear its commitments are designed to achieve. CSX explains that it “agreed to transitional restrictions on the rates it will charge for future movements originating or terminating on the existing PAR System lines to and from PAS” in order to “*support the continued viability of PAS as an alternative to CSXT for access to New England rail shippers by carriers other than CSXT.*” Amended Application, Pelkey V.S. at 12/APP-419 (emphases added). And CSX states categorically that its undertakings will “*ensure that shippers on the PAR System lines will have access to other rail connections to the national rail network.*” *Id.*²³

CP acknowledges that NS’s ability to route its two premium intermodal trains via CSX trackage rights trackage rights likely will improve service levels for the intermodal and automotive traffic these trains will carry. CP also acknowledges that diversions of other former-

²² These “transitional” restrictions disappear after {{[REDACTED]}}. See Amended Application, Pelkey V.S., CSX-NSR Settlement Agreement at § X at 6-7/APP-437 to -38 (“Zone 1-6 Pricing”).

²³ CSX witness Huneke confirms this objective: “CSXT entered into agreements with NSR, the other 50% owner of PAS, and with G&W to replace Springfield Terminal with B&E as the contract operator of PAS in order to *ensure that PAS would be independently operated and would continue to be a fully competitive alternative to CSXT’s southern parallel line.* And, in reaching these agreements, CSXT has *ensured that rail competition in New England will actually be strengthened and enhanced.*” Amended Application, Huneke V.S. at 6/APP-675 (emphases added).

REDACTED PUBLIC RECORD VERSION

PAR carload traffic away from PAS routes to new CSX single line routes – if they were allowed to occur – likely would entail operational efficiencies and other benefits.

But these traffic shifts would have adverse competitive consequences. The intermodal shifts will significantly reduce (if not eliminate) PAS's incentives to maintain the Hoosac Tunnel Route to current levels, which reflect many tens of millions of dollars of investments by NS in the PAS venture. In addition, with NS's double-stack intermodal and automotive traffic moving away to CSX's route, NS's incentive to operate the file/toupee intermodal operation at Mechanicville will likewise disappear. This in turn will further reduce the economic viability of moving any additional intermodal traffic (over and above the two NS trains per day allowed on CSX's route) via the Hoosac Tunnel Route, since there would be no infrastructure to enable double-stack operations east of Mechanicville. And the intermodal diversions will almost surely pull the rug out from under any possibility that NS would support the investments necessary to expand clearances at the Hoosac Tunnel to support the movement of additional double-stack intermodal traffic via the Hoosac Tunnel Route.

More fundamentally, the substantially reduced revenue-generating potential of the Hoosac Tunnel Line from the combined effect of the intermodal/automotive traffic diversions and the future loss of overhead manifest traffic to/from the former PAR lines that CSX will acquire, coupled with the line's diminished strategic value to NS, will leave the long term viability of the Hoosac Tunnel Route as a through route from New England to/from the west in grave doubt. One might reasonably expect the line to decline over time, with the risk that the owners would not support reinvestment necessary to restore service if there is another collapse in the Hoosac Tunnel or some other event that interrupts through service on the line.

Indeed, with CSX becoming a half-owner of PAS, it would appear to gain veto power over the level of capital maintenance and other investments in the line.²⁴ The future of PAS would thus be in the hands of one railroad – CSX – with no incentive to support competition with its own Southern Route and another – NS – with diminished incentives to make investments given its ability to route intermodal trains via CSX’s route and the diminished carload traffic available to support PAS.²⁵

2. *Appointing G&W as the Contract Operator of PAS Will Not Ensure the Line’s Competitive Viability*

As NS pointed out last November, it would obviously have been untenable for CSX’s acquisition of PAR to result in CSX assuming Springfield Terminal’s role as operator of the Hoosac Tunnel Route. CP is gratified that NS and CSX have taken steps to substitute a different operator when CSX assumes control of PAR.²⁶

However, Berkshire & Eastern’s proposed appointment as contract operator of the line does not inspire confidence in the long-run competitive vitality of the Hoosac Tunnel Route. First, unlike Pan Am today, as a mere contract operator B&E will have no financial interest in

²⁴ See *Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern R.R. – Operation of Property of Rail Carrier Pan Am Southern LLC – Pan Am Southern LLC & Springfield Terminal Ry.*, Supplement To Amended Petition For Exemption, Finance Docket No. 36472 (Sub-No. 5) (filed July 1, 2021) (“*P&S Supplement*”), Wagner V.S. at 6 (“CSXT and NSR, as co-owners of PAS, must approve the annual capital budget and have reserved to themselves the right to perform capital maintenance work on the PAS Lines.”).

²⁵ CP does not doubt NS’s sincerity when it says that it “is economically incentivized to ensure the continued competitiveness of PAS and NSR/PAS routings” (NS Reply Comments (filed Mar. 19, 2021) at 3), but there can be no doubt that the intensity of NS’s incentives is diminished by its settlement with CSX and its ability to continue to take advantage of the new trackage rights over CSX’s Southern Route along with {{REDACTED}}. See Amended Application, Exh. 12 (“Market Analysis”) at 9/APP-281.

²⁶ CP notes, however, that CSX’s affiliate Springfield Terminal will continue operating PAS until labor implementing agreements have been reached, and during that period {{REDACTED}} Amended Application, Pelkey V.S. at 12 n.4/APP-419.

PAS's success and long-term vitality – no “skin in the game.”²⁷ For their part, PAS's new owners will, in the case of CSX, have an interest in PAS not being a meaningful competitive constraint and, in the case of NS, a diminished interest in PAS relative to the pre-Transaction state of affairs in which PAS is NS's only way to reach New England in competition with CSX.

Second, as a wholly-owned subsidiary of Genesee & Wyoming, B&E will have conflicting interests that could impede the success of PAS. For PAR today, PAS provides a long-haul route connecting with NS and CP at Mechanicville, and winning traffic via this route is an unambiguous positive. G&W, on the other hand, owns several other railroads in New England, including the NECR and St. Lawrence & Atlantic, both of which have routes into Quebec. Although B&E is undertaking a contractual obligation to price PAS services in a manner that furthers the interest of PAS's two owners, this sort of contractual undertaking is not the same as the inherent and undivided competitive interest that Pan Am (along with PAS and NS) have today.

II. THE BOARD SHOULD IMPOSE NARROWLY-TAILORED CONDITIONS DESIGNED TO ASSURE THAT THE PAS HOOSAC TUNNEL ROUTE REMAINS AN OPERATIONALLY AND COMMERCIALY VIABLE COMPETITIVE ROUTE

The complex structure of the Transaction reflects CSX's recognition that its unremedied acquisition of Pan Am would unacceptably harm competition for New England rail traffic provided by the PAS Hoosac Tunnel Route. CSX has represented – repeatedly – that this will not occur. According to CSX, the Transaction will have no “adverse impact on competition for

²⁷ The Operating Term Sheet specifies that { [REDACTED] }. See *Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern R.R. – Operation of Property of Rail Carrier Pan Am Southern LLC – Pan Am Southern LLC & Springfield Terminal Ry.*, Finance Docket No. 36472 (Sub-No. 5), Amended Petition for Exemption (filed Apr. 27, 2021) (“*P&S Amended Petition*”) at 4 (filed April 27, 2021) at Exh. D, Term Sheet Agreement at III (“OpCo's Compensation”).

transportation within, into and out of New England” and “PAS will in fact be strengthened as an independent carrier serving the transportation needs of shippers in New England.” Amended Application at 3/APP-12. But the specific remedies CSX has negotiated are either for the benefit of NS and its intermodal and automotive shippers (up to the capacity limit of one trains each way a day) or are only temporary, risking the long-run decline and ultimate demise of the Hoosac Tunnel Route alternative for other rail traffic.

The Board should impose conditions designed to ensure that this anticompetitive outcome does not come to pass. CP does not wish to burden the Transaction in ways that might sacrifice its potential benefits, such as better CSX single-line services for PAR shippers and improved double-stack intermodal services via NS’s trackage rights on CSX. But appropriate conditions need not sacrifice any Transaction benefits. Indeed, preserving the long-run competitive viability of the PAS Hoosac Tunnel Route will help assure that competition conveys the benefits of those efficiencies to rail customers.

A. The Board Has Consistently Exercised Its Authority to Protect Competition with Appropriate Conditions in Non-Major Merger Proceedings

The Board has consistently and repeatedly made clear that it has the authority to impose conditions on non-Major railroad consolidations in order to safeguard competition. Most recently, in the Massena Line case, the Board explained that it “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 broadly.”²⁸ Accordingly, the Board will “impose competition-related conditions in non-major transactions [to remedy anticompetitive effects] ... without also

²⁸ *Bessemer & Lake Erie R.R. – Acquisition & Operation – Certain Rail Lines of CSX Transportation, Inc. in Onondaga, Oswego, Jefferson, Saint Lawrence, & Franklin Counties, N.Y.*, Finance Docket No. 36347 (STB Decision No. 7 served Feb. 25, 2021) at 7.

making a finding under § 11324(d)(2) that those anticompetitive effects would outweigh the overall public interest.” *Id.* at 8.²⁹ The Board should exercise that authority here, where an unconditioned Transaction would permanently and irrevocably threaten to alter the future competitive role of the PAS Hoosac Tunnel Route.

B. The Board Should Impose Conditions Requiring Applicants to Strengthen the Commitments They Have Made to Preserve Effective Long-Run Competition Via the Hoosac Tunnel Route

The conditions CP is seeking are necessary to preserve at least some portion of the incentives that exist today for PAS and its owners to maintain the competitive viability of its Hoosac Tunnel Route in the face of the very significant reductions in traffic the Transaction will cause.

1. ***Hold Transaction Participants to their representations and commitments.*** First and foremost, the Board should condition the Transaction on the Transaction Participants’ (again, CSX, Pan Am, PAS, NS, and G&W) honoring the many representations and commitments they have made to persuade the Board that, in the words of CSX’s Amended Application, the Transaction “will not have any adverse impact on competition for transportation within, into and out of New England and that PAS will in fact be strengthened as an independent carrier serving the transportation needs of shippers in New England.” Amended Application at 3/APP-12. The Board has routinely imposed conditions along these lines to safeguard competition. *See, e.g., PAS Creation Case* at 6 (conditioning transaction to “hold Applicants to

²⁹ Some ambiguity arises from the language of Section 11324, which refers to the Board’s obligation to approve a non-major transaction in the absence of a finding that competitive harm would outweigh competitive benefits. But the Board has held that, “[u]nder the plain language of the statute, ... it is only the Board’s authority to *deny* approval that is constrained by both (d)(1) and (d)(2); there is no such constraint on its authority to *approve with conditions*.” *Id.* at 9 (emphasis in original); *see also Village of Barrington v. STB*, 636 F.3d 650 (D.C. Cir. 2011) (applying same analysis to environmental conditions).

all representations made on the record in this proceeding”).³⁰ Among the specific representations to which Applicants should be held are:

- (a) CSX’s categorical representation that there will be no “adverse impact on competition for transportation within, into and out of New England” and “that PAS will in fact be strengthened as an independent carrier serving the transportation needs of shippers in New England.” Amended Application at 3/APP-12.
- (b) CSX’s representations that all gateways for movement of PAR traffic over PAS to its western connections, including CP, will be kept open on commercially reasonable terms.

CSX made this commitment repeatedly and in several forms. *See* Amended Application at 3/APP-12 (“CSXT has committed to keeping all gateways to other rail carriers open on commercially reasonable terms to ensure that PAR System shippers continue to have access to other carriers.”); *see also id.* at 15/APP-24 (“CSXT will commit to keeping open existing gateways on commercially reasonable terms and to ensuring access to rate regulation remedies if shippers are dissatisfied with rates for connections to other railroads.”); *Pelkey V.S.* at 17/APP-424 (“as part of this Amended and Supplemented Application, CSXT is committing to (a) keep all existing active gateways affected by the Proposed Transaction open on commercially reasonable terms, and (b) waive any right CSXT might otherwise have under the Board’s rules to refuse requests by shippers to establish local, separately challengeable rates for movements on the PAR System to an interchange with another rail carrier. In addition, CSXT’s agreement with

³⁰ *See also, e.g., Canadian National Ry., Grand Trunk Corp., & WC Merger Sub, Inc. – Control – Wisconsin Central Transportation Corp., Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Co., & Wisconsin Chicago Link Ltd.*, Finance Docket No. 34000 (STB Decision No. 10 served Sept. 7, 2001) at 12-14 (conditioning approval on compliance with representations); *Kansas City Southern – Control – The Kansas City Southern Ry., Gateway Eastern Ry., & The Texas Mexican Ry.*, Finance Docket No. 34342 (STB Decision No. 12 served Nov. 29, 2004) (“KCS-Tex Mex”) at 18-19; *Canadian Pacific Ry., et al. – Control – Dakota, Minnesota & Eastern R.R., et al.*, Finance Docket No. 35081 (STB Decision No. 11 served Sept. 30, 2008) at 27; *Canadian National Ry. & Grand Trunk Corp. – Control – EJ&E West Co.*, Finance Docket No. 35087 (STB Decision No. 16 served Dec. 24, 2008) (“CN/EJE”) at 15, 54-55.

NSR regarding rates to and from PAS ensures that there will be no foreclosure of efficient interchange movements.”).

To the extent there is any ambiguity, the Board should clarify that this obligation extends at least to the connection between CSX’s former PAR lines and PAS at Ayer and the connection between PAS and CP at Mechanicville (and CP’s Mohawk Yard), so that CP can continue to compete effectively for traffic moving to and from shippers served via PAS and former-PAR lines. The Board also should make explicit that this commitment can be enforced by any affected party, including both shippers and the connecting railroads (like CP) that would participate in interline movements involving PAS and CSX’s former PAR lines.

- (c) CSX’s representation that its “commitments” to preserve competitive routings via PAS “go well beyond open gateways.” Amended Application, Reishus V.S. at 8/APP-534.

CSX articulates a cluster of commitments designed to reassure the Board and the public that the Transaction will have no effect on the competitive viability of the Hoosac Tunnel Route and the competitive interline routing options that depend on that route. The passage quoted directly above continues by spelling out that “[t]he Proposed Transaction establishes and caps rate factors on connecting traffic to and from PAR System for local or overhead traffic on PAS. These commitments and terms of the Proposed Transaction provide a level of access and independent competitive pricing to shippers using interconnecting carriers that go beyond what efficient component pricing would require.” *Id.*; *see also id.* at 103/APP-629.

CSX restates these commitments repeatedly. Just a few additional examples include CSX’s representations that:

- “[n]o existing routes will be closed” (Amended Application at 15/APP-24);
- “[n]o existing interchange options will be eliminated;” (*Id.*); and

- “[n]o Class I railroad that currently has access to rail customers in New England will lose that access.” (*Id.*)

Compliance with this cluster of related commitments should be made a condition of approval – not just a contractual matter between CSX and NS – and the substance of CSX’s commitments (not necessarily any specific contractual provisions) should be extended beyond the “transitional” periods to which the specific terms of the NS-CSX agreement apply.

- (d) CSX’s commitment that G&W will operate PAS “for the benefit of PAS (and its owners), and not in the interest of any affiliated rail carrier.” *P&S Amended Petition* at 4.

This commitment should be extended to any entity that operates PAS and clarified to preclude CSX (with its conflicting competitive incentives) from influencing the operations of PAS.

- (e) The commitment of Transaction Participants that G&W, “operating the PAS Lines, would maintain PAS’s access to the NSR, CP, and CSXT rail systems, and to each of the short line railroads that connect to the PAS Lines.” *P&S Amended Petition* at 4.

This commitment should be extended to any entity that operates PAS.

- (f) The commitment of Transaction Participants that G&W, as operator of PAS, will “provide PAS service at substantially the same level as is currently being provided by Springfield Terminal” *P&S Amended Petition* at 4.

This commitment should be extended to any entity that operates PAS.

- (g) The commitment of Transaction Participants that G&W, as operator of PAS, will set “rates for PAS in a non-discriminatory, competitively neutral fashion as to all rail carriers that have the ability to interchange traffic with PAS or otherwise connect to PAS.” *P&S Amended Petition* at 4-5.

This commitment should be extended to any entity that operates PAS.

2. ***Impose Conditions Designed to Preserve the Competitive Viability of the Hoosac Tunnel Route.*** Although CSX acknowledges the importance of preserving competition via the Hoosac Tunnel Route, its commitments (contractual and otherwise) do not go far

enough to ensure that the changed structural incentives created by the Transaction will not lead to the ultimate downgrading or demise of that competitive alternative. In the unique circumstances of this case, where the Transaction will remove existing incentives to maintain a critical, competitive through route, the Board should condition the Transaction on the Transaction Participants maintaining the Hoosac Tunnel Route and operations on the line to current standards over the long run, including by:³¹

- Formally requiring that CSX and PAS keep the Mechanicville and Ayer Gateways open on commercially reasonable terms for traffic reached via PAS and PAR lines, including via CP-PAS-CSX and CP-PAS interline routings;
- Requiring PAS and its owners to support sufficient spending on maintenance and infrastructure on the Hoosac Tunnel Route to maintain service levels (frequency, transit times, and consistency) at pre-Transaction levels between Mechanicville and Ayer (for online shippers and efficient interline connection to CSX’s former-PAR lines);³²
- Requiring that PAS and its operator provide service levels (again, frequency, transit times, and consistency) that are at least comparable to those offered pre-Transaction for traffic interchanged at the Mechanicville Gateway.

3. ***Retain Oversight and Authority to Impose Additional Conditions Designed to***

Preserve or Restore Competitive Viability of Hoosac Tunnel Route. Finally, the Board should condition the Transaction on the Transaction Participants’ acceptance of formal Board oversight

³¹ The Board has frequently acted in non-major cases to “preserve” existing the competitive status quo from long-term degradation. *See, e.g., Norfolk Southern Ry. – Acquisition & Operation – Certain Rail Lines of The Delaware & Hudson Ry.*, Finance Docket No. 35873 (Decision No. 6 served May 15, 2015) at 34-35 (imposing condition “appropriate to preserve ... pre-transaction competitive options”); *CN/EJE* at 13-14 (imposing conditioned to preserve potential buildout opportunities, including through grant of trackage rights as necessary).

³² In a worst case scenario where the Hoosac Tunnel Route is blocked as a result of a collapse of the tunnel or other events, CSX should be required to convert its contractual commitment to allow detours of PAS manifest and other traffic via CSX’s Southern Route into permanent haulage or trackage rights. *See Amended Application, Pelkey V.S., NSR Settlement Agreement, § V (at 5/APP-436)* (“If the Hoosac Tunnel and/or the Little Tunnel becomes impassable, CSX agrees to allow PAS trains requiring an alternative route on its southern route between Rotterdam Jct., NY and Harvard, MA pursuant to the terms of standard detour agreements similar to previous emergency situations where CSX and NSR have assisted each other in the past.”).

concerning the effects of the Transaction on the competitive viability of the PAS Hoosac Tunnel Route.³³ The Board should provide that such oversight could be commenced (with good cause) by any interested party if developments indicate a valid concern regarding the Transaction’s impact. Given the unique circumstances of this case, where the Transaction poses a long-term threat, this oversight period should continue indefinitely. To protect the Board’s ability to take action if circumstances warrant, it should explicitly reserve the authority to impose additional conditions on the Transaction as necessary to preserve (or restore) the competitive viability of the Hoosac Tunnel Route, potentially including the obligation to (a) make specified investments in the route, (b) shift certain traffic to the route, (c) make available reasonable commercial terms for interline traffic via the route; or (d) convey the route (or the PAS membership interest of CSX) to a third party that is willing to make the investments necessary to preserve its competitive significance.³⁴

³³ The Board has frequently imposed oversight conditions in non-major cases. *See, e.g.*, (“*CN/EJE*”) at 17, 25 (“If operational problems arise after consummation of the transaction, this oversight condition should provide a fully effective mechanism for quickly identifying and addressing them;” “By imposing the oversight and monitoring condition described below, the Board will be able to address any possible service issues that may arise and to ensure that service levels are reasonable and adequate.”); *KCS-Tex Mex* at 20-21 (reserving right to conduct oversight); *Canadian National Ry. & Grand Trunk Corp. – Control – Duluth, Missabe & Iron Range Ry., Bessemer & Lake Erie R.R., & The Pittsburgh & Conneaut Dock Co.*, Finance Docket No. 34424 (Decision No. 7 served Apr. 9, 2004) (“*CN/DMIR*”) at 7 (imposing oversight condition).

³⁴ The Board has routinely retained jurisdiction in non-major cases to take additional measures that may prove necessary to remedy effects of the control transactions it approves. *See, e.g.*, *CN/DMIR* at 7 (“retaining jurisdiction to impose additional conditions and/or to take other action if, and to the extent, the Board determines it is necessary to impose additional conditions and/or to take other action”); *CN/EJE* at 6, 26 (“The Board retains jurisdiction to impose additional conditions and take other action if, and to the extent, the Board determines it is necessary to address matters related to operations following the transfer of control.”); *cf. Union Pacific Corp., Union Pacific R.R., & Missouri Pacific R.R. – Control & Merger – Southern Pacific Rail Corp., Southern Pacific Transportation Co., St. Louis Southwestern Ry., SPCSL Corp., & The Denver & Rio Grande Western R.R.* Finance Docket No. 32760 (STB Decision No. 44 served Aug. 12, 1996) at 13, 105, 146 (retaining jurisdiction to impose additional conditions, “including divestiture,” if conditions imposed by Board “have not effectively addressed the competitive harms caused by the merger”).

CONCLUSION

CSX acknowledges the importance of preserving the competitive role of the Hoosac Tunnel Route, but the complex contractual undertakings it proposes are not sufficient to ensure that the public's interest in competition is fully protected. The Board should impose the conditions CP proposes to ensure that the long-term consequences of the Transaction will line up with the pro-competitive characterizations and representations of Transaction Participants.

Respectfully submitted,



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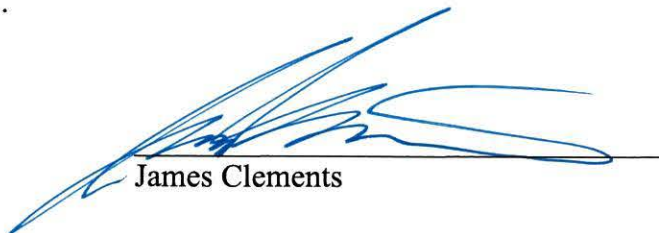
Attorneys for Canadian Pacific

August 27, 2021

VERIFICATION

I, James Clements, declare under penalty of perjury under the laws of the United States that the facts set forth in CP's foregoing Comments relating to Canadian Pacific are true and correct. Further, I certify that I am qualified and authorized to file this statement. I have not been given access to the confidential materials that are redacted in the Public Version of these Comments.

Executed on this 26 day of August, 2021.



James Clements

REDACTED PUBLIC RECORD VERSION

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing redacted public record version of Canadian Pacific's Comments to be served electronically or by first class mail, postage pre- paid, on all parties of record in this proceeding.

/s/ David L. Meyer
David L. Meyer

August 27, 2021

APPENDIX

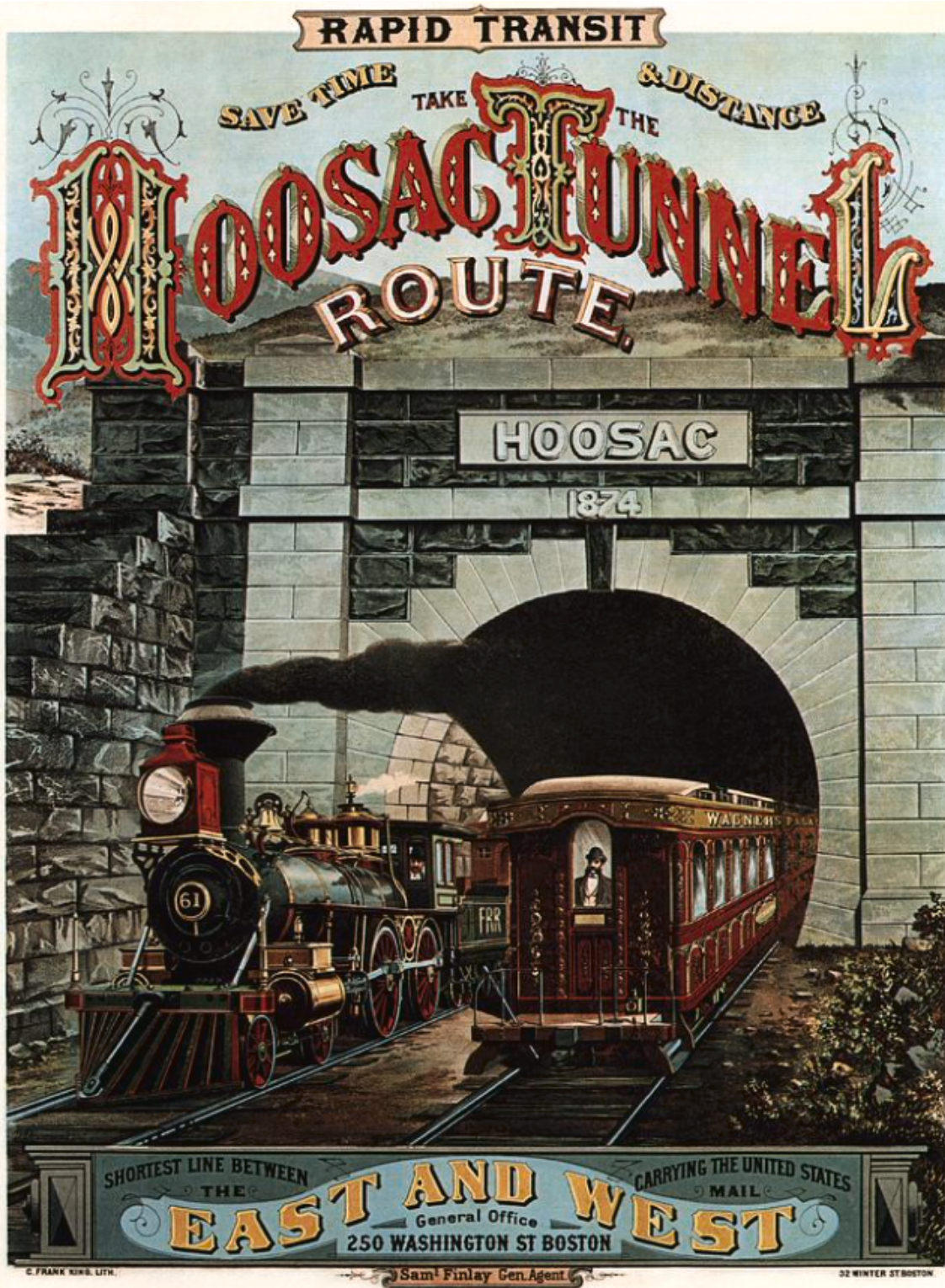


EXHIBIT 1

**COMMONWEALTH OF MASSACHUSETTS,
“THE PATRIOT CORRIDOR DOUBLE-STACK CLEARANCE
INITIATIVE PROJECT” (WINTER 2021)**

The Patriot Corridor Double-Stack Clearance Initiative Project

Winter 2021

GETTING STARTED

The Project team began by collecting data. A 360° laser scan of the entire 155-mile corridor identified obstructions that do not meet the 21-foot vertical clearance for double-stacked containers. The work also included aerial surveys, inspecting each location, and testing for shallow bedrock conditions.

The Project team identified key issues and developed recommendations for making clearance improvements at each location. The team evaluated conditions at each site and identified environmental resources such as wetlands, historic properties, and threatened and endangered species that might be affected by the Project. Any track and bridge construction activities would be limited to the 23 locations (21 bridges and 2 tunnels).

ABOUT THE PROJECT

The Patriot Corridor Double-Stack Clearance Initiative Project (the “Project”) is looking at the potential for operating double-stacked “domestic” railroad containers along the existing 155 mile long freight railroad corridor known as the PAS Freight Main Line (FML). Most of this corridor is owned and operated by Pan Am Southern Railroad (PAS). The Massachusetts Bay Transportation Authority (MBTA) owns a 15-mile section of the corridor between Fitchburg Station and Ayer, which carries its commuter rail service on the Fitchburg Line. PAS maintains exclusive freight rights on the MBTA Fitchburg Line.

The study identified 21 bridges and 2 tunnels on the corridor that are too low for trains to carry double-stacked containers. The Project would raise the height of bridges and tunnels or lower the railroad tracks so these freight trains can use the line. MassDOT and PAS received funding from the Federal Railroad Administration (FRA) to collect data, develop a preliminary design, and prepare and file environmental documents. At this time, funding is not identified for final design and construction. The FRA sees this Project as an investment in long-distance rail freight service in New England and New York.



Norfolk Southern train carrying double-stacked containers.



East portal of the Hoosac Tunnel today.

GETTING STARTED - CONTINUED

The construction would occur within the existing railroad right-of-way and on temporary construction easements. The preliminary environmental findings of the Project include:

- » Improvements to the transportation infrastructure will make freight movement by rail more efficient.
- » No property has to be purchased and no displacements are anticipated.
- » No air quality impacts are anticipated; measures would be taken to reduce pollutant emissions during construction to meet all applicable laws and regulations.
- » No anticipated impacts to wildlife and waterfowl refuges are expected.
- » No adverse impacts to threatened and endangered species are anticipated.
- » No anticipated water quality impacts to waterbodies or groundwater resources.
- » Permits may be required for work in and/or adjacent to wetland resource areas and floodplains.
- » No long-term noise or vibration impacts are anticipated; temporary construction noise and vibration will be minimized/mitigated, as required.
- » No long-term traffic effects are anticipated; temporary transportation-related impacts will be minimized/mitigated with pedestrian and vehicular detours during construction.
- » The project is not anticipated to increase railroad operations beyond what is projected today.
- » Agency consultation to assess effects to historic resources is underway.
- » No anticipated changes to socioeconomic or community characteristics.
- » No anticipated adverse impacts to public safety.

The next step is to document the environmental review. This documentation of the environmental review, called a Categorical Exclusion, is required by the National Environmental Policy Act (NEPA). MassDOT is working with the FRA to complete the Categorical Exclusion for the Project. The current Project design does not meet or exceed review levels established by Massachusetts and New York state environmental regulations, so it does not require additional review and documentation. Once the requirements of the environmental review and other regulatory processes have been met, the Project team would advance the design phases for the 23 locations. At this time, funding is not identified for final design and construction phase services.



Hoosick River Truss in Pownal, New York.

PUBLIC OUTREACH

MassDOT has informed the 14 communities along the right-of-way that construction may take place along their segment of the rail and will provide updated information on the Project website at key milestones.

For more information or to sign up for email updates, visit the Project website:

www.mass.gov/patriot-corridor-double-stack-clearance-initiative.

Email Scott Conti, Project Manager, MassDOT Rail and Transit, with questions or comments at:

Scott.Conti@dot.state.ma.us.

Proposed Work Locations and Recommendation to Achieve Clearance

Location	Location Name	Recommendation
Pownal, VT; Petersburg, NY	Hoosick River Bridge	Truss Modifications
Williamstown, MA	Route 7 (Simonds Road)	Track Undercut
North Adams, MA	Appalachian Trail (Pedestrian Bridge)	Track Undercut
North Adams, MA	Furnace Street (Pedestrian Bridge)	Track Undercut
North Adams, MA	State Street (Route 8)	Track Undercut
North Adams, MA	Little Tunnel	Track Undercut
North Adams, MA	Hoosic River Truss	Modify Bridge Deck/Floor Beams
North Adams, MA; Florida, MA	Hoosac Tunnel (West and East Portal)	Track Undercut/Crown Raise
Greenfield, MA	Conn River RR / PAR ML	Track Undercut
Montague, MA	Northfield Road Bridge (AKA Turners Falls Road)	Track Undercut
Montague, MA	NECR (CV) Railroad	Track Undercut
Montague, MA	Bridge Street Truss (AKA Hill Street)	Track Undercut
Orange, MA	South Main Street (Route 122)	Bridge Deck Replacement
Orange, MA	Brookside Road (AKA Athol Street)	Bridge Replacement
Athol, MA	Main Street (Route 2A)	Track Undercut/Bridge Modifications
Athol, MA	Chestnut Hill Avenue Bridge	Track Undercut/Bridge Reconstruction
Templeton, MA	Main Street (AKA Depot Road)	Track Undercut
Gardner, MA	Pleasant Street (AKA Jackson Street)	Track Undercut
Fitchburg, MA	Rollstone Street	Track Undercut
Fitchburg, MA	Putnam Street	Track Undercut/Bridge Modifications
Fitchburg, MA	Water Street	Track Undercut/Bridge Modifications
Leominster, MA	Harvard Street	Track Undercut
Ayer, MA	Main Street (Route 2A)	Track Undercut



Little Tunnel in North Adams, MA.



The Hoosac Tunnel: A Marvel of Engineering and Construction

One of the sites to be modified as part of the Patriot Corridor Project is more than your ordinary rail tunnel. The Hoosac Tunnel carries freight Main Line trains 4 ¾ miles through the Hoosac mountain range in North Adams and Florida, MA. The tunnel played a significant role in the history of railroad construction.

New Englanders saw the route through the Hoosac mountain range as a crucial link to the west during the country's railroad boom, but the mountain range was insurmountable by rail. That is, until Alvah Crocker, a local paper mill owner, chartered the Troy and Greenfield Railroad to take on what would become one of the most ambitious engineering feats in the country's history.

The construction of the Hoosac Tunnel began in 1851. Approximately 800 men worked in shifts around the clock. Almost every technology was used over the course of construction, including the relatively new explosive nitroglycerin. The project took a painstaking 24 years and claimed nearly 200 lives. The project posed such difficulties that the Troy and Greenfield Railroad declared bankruptcy in 1862. The Commonwealth of Massachusetts took over the project and saw it through. When the first train finally rode through the tunnel in 1875, it was the second longest tunnel in the world.

The Patriot Corridor Project avoids any alterations to the tunnel's original portal structures. Work proposed at the west portal includes replacing/modifying the metal storm doors and lowering the tunnel track. The east portal meets the necessary clearance for double-stack cars, so no changes are needed. The interior of the tunnel will be raised to increase clearance by stone grinding or drilling.

* Photo above shows the East portal of the Hoosac Tunnel circa 1915 (via Wikimedia Commons).

MassDOT is proud to honor the history of the Hoosac Tunnel by ensuring it continues to serve its purpose for years to come: transporting trains with ease and efficiency on their way through the Berkshires and across 55 miles of Massachusetts to Fitchburg.

Primary source: Reints, Renae. "TBT: The Final Blast through Hoosac Mountain." Boston Magazine. (www.bostonmagazine.com/news/2017/11/30/hoosac-tunnel/)

CONTACT US

For more information or to sign up for email updates, visit the Project website:

www.mass.gov/patriot-corridor-double-stack-clearance-initiative

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