

51014  
EB

SERVICE DATE – DECEMBER 10, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36472<sup>1</sup>

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

Digest:<sup>2</sup> The Board affirms its earlier preliminary conclusion that an environmental and historic review is not required for this proceeding.

Decision No. 5

Decided: December 10, 2021

In a decision served on July 30, 2021 in this docket (Decision No. 4), served and published in the Federal Register (86 Fed. Reg. 41,145) on July 30, 2021, the Board accepted for consideration the revised application (Revised Application) filed by CSX Corporation (CSXC), CSX Transportation Inc. (CSXT), 747 Merger Sub 2, Inc. (747 Merger Sub 2), Pan Am Systems, Inc. (Systems), Pan Am Railways, Inc. (PAR), Boston and Maine Corporation (Boston & Maine), Maine Central Railroad Company (Maine Central), Pan Am Southern, LLC (PAS), Northern Railroad (Northern), Portland Terminal Company (Portland Terminal), Springfield Terminal Railway Company (Springfield Terminal), Stony Brook Railroad Company (Stony

---

<sup>1</sup> This decision embraces the following dockets: Norfolk Southern Railway—Trackage Rights Exemption—CSX Transportation, Inc., Docket No. FD 36472 (Sub-No. 1); Norfolk Southern Railway—Trackage Rights Exemption—Providence & Worcester Railroad, Docket No. FD 36472 (Sub-No. 2); Norfolk Southern Railway—Trackage Rights Exemption—Boston & Maine Corp., Docket No. FD 36472 (Sub-No. 3); Norfolk Southern Railway—Trackage Rights Exemption—Pan Am Southern LLC, Docket No. FD 36472 (Sub-No. 4); Pittsburg & Shawmut Railroad—Operation Exemption—Pan Am Southern LLC, Docket No. FD 36472 (Sub-No. 5); SMS Rail Lines of New York, LLC—Discontinuance Exemption—in Albany County, N.Y., Docket No. AB 1312X.

<sup>2</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

Brook), and Vermont & Massachusetts Railroad Company (V&M) (collectively, Applicants). The Revised Application seeks Board approval under 49 U.S.C. §§ 11321-26 for: (1) CSXC, CSXT, and 747 Merger Sub 2 to control the seven railroads controlled by Systems and PAR, and (2) CSXT to merge six of the seven railroads into CSXT. This proposal is referred to as the Merger Transaction. In addition to the Merger Transaction, there are six related transactions (Related Transactions), discussed below, for which parties seek approval.

As pertinent here, in Decision No. 4 the Board sought public comment on its preliminary conclusion that no environmental or historic review of the Merger Transaction or the Related Transactions is warranted. The Board also directed CSX<sup>3</sup> to file supplemental information on traffic projections by providing segment-specific traffic forecasts through 2027—five years after the anticipated date of the issuance of a final decision by the Board. Based on all of the information available to date, including CSX’s supplemental information, all public comments received, and, in consultation with the Office of Environmental Analysis (OEA), the Board affirms its prior conclusion that an environmental and historic review is not required in these proceedings.

## BACKGROUND

*The Merger and Related Transactions.* The specifics of the Merger Transaction have been detailed in previous decisions in this docket. In short, CSX and 747 Merger Sub 2 seek Board authority to acquire control of the seven PAR railroads within Systems’ corporate family and to merge six of the railroads into CSX.<sup>4</sup> (Revised Appl. 6-7.) One of the PAR railroads, Boston & Maine, owns a 50% interest in a Class II carrier, PAS, which is a 50/50 joint venture with Norfolk Southern Railway Company (NSR). (Id. at 6.) PAS is operated by another PAR rail carrier, Springfield Terminal, which is also a Class II rail carrier. (Id.) As CSX would wholly own and control Boston & Maine, CSX and 747 Merger Sub 2 also seek authority to acquire Boston & Maine’s 50% joint ownership in PAS. (Id. at 7-8.)

Four of the Related Transactions are verified notices of exemption filed pursuant to 49 C.F.R. § 1180.2(d)(7) for NSR to obtain overhead trackage rights over rail lines owned by CSX, Providence & Worcester Railroad Company, Boston & Maine, and PAS.<sup>5</sup> The purpose of the trackage rights would be to allow NSR to reroute a pair of intermodal/automobile trains from

---

<sup>3</sup> CSXT is a wholly owned subsidiary of CSXC. Throughout the filings, arguments are sometimes attributed to “CSX” while other times to “CSXT.” From this point forward, the Board refers to CSXT and/or CSXC as “CSX.”

<sup>4</sup> PAR wholly owns four rail carriers: Boston & Maine, Maine Central, Portland Terminal, and Springfield Terminal. Boston & Maine directly and wholly owns Northern, a 99.27% interest in Stony Brook, and a 98% interest in V&M. (Revised Appl. 6.) CSX does not request merger authority with respect to V&M because Boston & Maine does not wholly own V&M. (Id. at 7.)

<sup>5</sup> See Decision No. 4, slip op. at 6-7, for a description of the locations of each specific segment.

the current east-west route on the PAS-owned line (referred to herein as the Northern Route)<sup>6</sup> to a parallel east-west route (referred to herein as the Southern Route).<sup>7</sup> This reroute would allow NSR to double-stack containers on its intermodal trains, something it cannot do on the Northern Route because of a tunnel clearance constraint.

The fifth Related Transaction is a petition filed by Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad (B&E) for an exemption under 49 U.S.C. § 10502 and 49 C.F.R. part 1121 from the provisions of 49 U.S.C. §§ 11323(a)(2) and 11324 to allow B&E to replace Springfield Terminal as the operator of PAS.

The final Related Transaction is a verified notice of exemption filed by NSR, on behalf of SMS and with SMS's consent, for SMS to discontinue common carrier service and terminate its lease operations over approximately 15 miles of rail line owned by NSR and located between Voorheesville and Delanson, N.Y., including the use of a connecting wye track and track leading to the Northeast Industrial Park (Delanson-Voorheesville Line). SMS's request for discontinuance authority is related to the trackage rights NSR is seeking. (SMS Notice 3 n.5, AB 1312X.) The SMS discontinuance of the Delanson-Voorheesville Line would allow NSR trains to access the new routing along the Southern Route more efficiently than it otherwise could. (See Letter from CSX to Danielle Gosselin, Acting Director, OEA, at 5 (Apr. 7, 2021) (Env't Comment EI-30550) (herein referred to as CSX Env't Comment).)

*Preliminary Environmental Conclusion.* In Decision No. 4, the Board made a preliminary conclusion that, based on the record, the Merger Transaction and the Related Transactions qualify for categorical exclusions from environmental review under 49 C.F.R. § 1105.6(c)(1)(i) and that no historic reporting under 49 C.F.R. § 1105.8 is required. No party has submitted any comments specifically requesting an environmental or historic review.

The conclusion in Decision No. 4 was based on two considerations. First, it did not appear that the thresholds triggering an environmental review under the Board's regulations at 49 C.F.R. § 1105.6(b)(4) and 1105.6(c)(1)(i) would be reached or exceeded,<sup>8</sup> and second, available environmental information did not indicate the potential for any significant environmental or historic impacts resulting from the proposed Merger Transaction or the Related Transactions. Decision No. 4, slip op. at 25-26.

---

<sup>6</sup> The Northern Route runs from Mechanicville, N.Y., to a point near Willows, Mass.

<sup>7</sup> The Southern Route runs from Voorheesville, N.Y., to Ayer, Mass.

<sup>8</sup> As discussed in more detail below and in Decision No. 4, slip op. at 24-26, the thresholds that are relevant here provide that merger transactions are categorically excluded from formal environmental review unless the proposed action would result in: (1) an increase of at least eight trains per day on any segment of rail line affected by the merger proposal; or (2) an increase in rail traffic of at least 100% (measured in annual gross ton miles). Neither threshold was met in this case, and in Decision No. 4, the Board found no "extraordinary circumstances" that would warrant preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS).

The only environmental concern raised in the earlier phase of the proceeding involved potential impacts of additional train traffic on the Wachusett Reservoir, which provides fresh water to approximately three million people in the Boston metropolitan area. The Board stated that most of these concerns about the Wachusett Reservoir are related to the existing PAR carload traffic in the area and would not be noticeably affected by the small amount of additional projected train traffic around the reservoir. *Id.* at 26 (stating that there would only be two additional NSR trains per day (well under the applicable eight-train per-day threshold) and that those trains would be less prone to accidents and derailments). The Board also noted that CSX had committed to explore ways to strengthen the existing rail infrastructure in the area, including by agreeing to upgrade the 7.6 miles of line adjacent to the reservoir to Federal Railroad Administration (FRA) Class 3 standards. *Id.* Accordingly, as part of its preliminary determination, the Board held that concerns regarding the Wachusett Reservoir did not warrant an environmental review in this proceeding. *Id.*

The Board did, however, find it appropriate to consider the potential for traffic growth beyond the three years of traffic projections (estimated forecasts for 2022 through 2024) submitted with the Revised Application. (See Revised Appl., Ex. 22-D, V.S. Wallace; see also Revised Appl., Ex. 14, Density Charts.) Even though CSX had asserted that there would not be significant traffic growth during the first three years after the proposed merger while CSX integrated the PAR system into the CSX network, the Board noted in Decision No. 4 that CSX also stated that “[f]ollowing the integration of PAR and the implementation of the operating and infrastructure improvements, CSX expects to see additional traffic growth opportunities over a multi-year horizon in certain areas.” Decision No. 4, slip op. at 26 (quoting Revised Appl., Ex. 22-D, V.S. Wallace 7). Accordingly, the Board directed CSX to provide updated traffic forecasts on a segment-specific basis through 2027, encompassing a full five years of projections after the transaction would be potentially approved. *Id.* at 26. The Board stated that this additional data would allow it to fully evaluate whether the impact of the Merger and Related Transactions would have any potential for environmental impacts warranting environmental review once the PAR System integration has occurred. *Id.* The Board invited all interested parties to submit comments on both the Board’s preliminary environmental conclusions and CSX’s additional traffic forecasts. The Board stated that after all such information was filed, OEA would make a final recommendation to the Board regarding whether any environmental or historic review is required. *Id.* at 27.

Supplemental Traffic Forecasts. In accordance with the Board’s directive in Decision No. 4, CSX submitted supplemental traffic forecasts on August 19, 2021, through a verified statement of the late Mark Wallace, an Executive Vice President at CSX who passed away last month. CSX includes traffic projections for the years 2025 to 2027 by comparing growth under a “no action” scenario (i.e., growth that would occur even without the Merger and Related Transactions) to growth under a “proposed transaction” scenario (i.e., growth that would occur if the Merger and Related Transactions are approved). (CSX Suppl., V.S. Wallace 4.)<sup>9</sup> Under

---

<sup>9</sup> For the PAR System, CSX develops three different “no action” baseline projections: an “Original Forecast” projection; a “GDP Update” projection; and a “PAR Growth” projection. (CSX Suppl., V.S. Wallace 6-10.) For the “proposed transaction” forecast, CSX first adds the

these forecasts, there were no changes to the number of CSX’s projected trains—an increase of no more than two trains per day on any segment through 2027, which is well under the eight-train per-day threshold for environmental review that is applicable here.

Comparing the “proposed transaction” forecasts against the various “no action” baseline forecasts, CSX calculates that there would be a substantial increase in traffic by 2027 only on the Worcester-Ayer segment—located on the Southern Route—with an increase in millions of gross-ton miles (MGTM) of between 74% and 85%, depending on which baseline forecast is used. (CSX Suppl., V.S. Wallace, Ex. 4.) The next largest increase would be on the Rotterdam Junction-Mechanicsville segment—located on the Northern Route—with an increase in MGTM of 24%. (Id.)

The Board received comments suggesting that CSX’s updated traffic projections may be understated, but no commenter presented evidence that the Board’s thresholds for environmental review would be triggered here either because there would be an increase of eight trains or more per day, or because the MGTM threshold would be exceeded. The Massachusetts Department of Transportation (MassDOT) and the Massachusetts Bay Transportation Authority (MBTA) state that CSX’s traffic projections for the Ayer-Willows segment may be understated because, post-transaction, several carriers would continue to have the right to operate over it, including: MBTA, CSX, PAS, and (possibly) NSR. (MassDOT/MBTA Reply to CSX Suppl. 3-4.)<sup>10</sup> The State of Vermont notes that CSX portrays “the anticipated growth in traffic volumes to simply track with market conditions, with little additional growth, if any, attributable to the merger,” and therefore, questions the “commercial underpinnings” of the proposed merger. (Vermont Reply to CSX Suppl. 1.) In its reply to the Revised Application, Canadian Pacific Railway Company

---

rerouted NSR intermodal/automobile traffic to the volumes for the segments on the Southern Route, then applies the PAR Growth Forecast to this traffic base for the years 2019 to 2024. (Id.) In addition, CSX assumes that CSX would start to convert some truck traffic to rail beginning in 2025 and so applies an additional truck-to-rail conversion growth rate for 2025 to 2027. (Id. at 11.)

For the CSX and PAS lines, CSX relies on the same Original Forecast and GDP Update forecast as baselines under a “no action” scenario. (Id. at 12-13.) (CSX does not develop a commodity-specific baseline growth forecast, as that growth rate was specific only to the PAR System. (Id. at 13.) For the “proposed transaction” forecast, CSX again accounts for the impact the rerouted NSR intermodal/automobile trains would have on volumes, then applies the Original Forecast and GDP Update growth factors to this expanded traffic base. (Id., Ex. 4.) However, unlike for the PAR projection, CSX does not forecast changes in “expected” growth, (id.), by which it appears CSX means the truck-to-rail conversions growth rate.

<sup>10</sup> In this filing, MassDOT and MBTA also raise concern about the impact traffic increases on the Ayer-Willows segment will have on capacity and operating windows for freight and passenger operations. (MassDOT/MBTA Suppl. 3 & App.) The Board will address these arguments as part of its final decision on the merits.

(CP) argues that the merger would lead over time to the diversion of substantial volumes of traffic away from the Northern Route to the Southern Route.<sup>11</sup> (CP Reply 15-17.)<sup>12</sup>

*Environmental Comments.* While some commenters have raised issues relating to the environmental impact of rail operations contemplated by the Merger Transaction and the Related Transactions, as discussed further below, no commenter argues that the Board erred in preliminarily determining that the Merger Transaction and Related Transactions are subject to a categorical exclusion from environmental review. And the Board received no requests for preparation of an EA or EIS.

The Village of Voorheesville (Voorheesville) filed a letter stating that NSR's planned rehabilitation of the track connecting its line to CSX's line would interfere with Voorheesville's plans to establish an FRA-authorized Quiet Zone. (Voorheesville Letter 1-2, July 20, 2021.) Voorheesville also expresses concern about the potential for blocked crossings resulting from the NSR trains that would now be routed through the village and about falling debris and rocks from a railroad overpass at Maple Avenue. (*Id.* at 2.) In its reply to the Revised Application, the Altamont Free Library (AFL) raises concerns about the impact the NSR trains would have on the town of Altamont, N.Y. AFL expresses concern that the crossing at Main Street would be blocked, impeding emergency responders and creating unsafe roadway traffic backups. (AFL Reply 1.) AFL also states that it is concerned about the effect that these trains would have on the library building itself, which is located in the Altamont Train Station, was built in 1897, and is located only 20 feet from the track. (*Id.*) Several residents of the Islington Creek neighborhood in Portsmouth, N.H., filed a letter expressing concerns over noise and diesel fumes that come from idling trains at Pan Am's existing yard near Maplewood Avenue. (Islington Creek Letter 1, Sept. 1, 2021.) According to the residents, a representative of PAR previously pledged to look to find the best location to park its trains and to work with the community to address other concerns. The residents claim, however, that no progress has been made and that the situation has worsened. (*Id.* at 2.)

Finally, in their reply to the Revised Application, MassDOT/MWRA outline specific conditions that they request the Board impose as part of any approval, all of which relate to the Worcester-Ayer segment that runs adjacent to the Wachusett Reservoir. (MWRA Reply 3-9.)<sup>13</sup> This request includes proposed conditions that would require CSX to: upgrade and maintain the 7.6-mile segment along the reservoir to FRA Class 3 standards; allow MWRA, MassDOT, or MBTA to conduct inspections of the track; operate trains at no more than 25 miles per hour; and limit the idling of trains on the segment. (MassDOT/MBTA Reply 7 n.2.)

---

<sup>11</sup> CP refers to the Northern Route as the "Hoosac Tunnel Route."

<sup>12</sup> CP raises this argument in support of its concern that the Merger and Related Transactions would result in the Northern Route being no longer viable, not in relation to the issue of whether the Board needs to conduct an environmental review.

<sup>13</sup> MWRA states that it, along with MassDOT and MBTA, have been engaged in discussions with the Applicants to reach a written agreement to address their concerns related to the reservoir. (MWRA Reply 3.)

*CSX Environmental Reply.* CSX filed a reply to the various environmental comments on September 24, 2021 (hereafter CSX Env't Reply, Sept. 24, 2021). CSX argues that the proposed Merger and Related Transactions continue to qualify for a categorical exclusion from environmental review and that none of the comments have demonstrated "extraordinary circumstances" that would otherwise necessitate an environmental review. (CSX Env't Reply 1, Sept. 24, 2021.) Regarding the comments on its supplemental traffic projections, CSX notes that no commenter claims that by 2027 there would be an eight-train per-day increase on any segment or that the MGTM thresholds would be met. Therefore, it argues, none of the comments invalidate or even challenge the Board's preliminary conclusion that the transactions qualify for a categorical exclusion from environmental review. (*Id.* at 16.) In response to MassDOT/MBTA's concerns related to potential effects on the Wachusett Reservoir, CSX states that those parties did not request an environmental review, that there is existing train traffic near the reservoir, and that traffic over the Ayer-Willows segment would only increase by two trains per day. (*Id.* at 17.) CSX also states that it has made substantial progress in reaching a mutually acceptable agreement with MWRA and MassDOT/MBTA regarding the steps CSX will take to reduce potential impacts to the reservoir from nearby rail operations. It also details the actions it has taken, and will continue to take, in response to the concerns of Voorheesville, AFL, and the Islington Creek neighborhood. (*Id.* at 4-12, 15-16.)

*CSX Rebuttal.* In addition to its environmental reply, on October 18, 2021, CSX filed its response to the comments, protests, requests for conditions, and other opposition, and its rebuttal in support of the Revised Application (collectively referred to as CSX's Rebuttal). CSX again provides arguments as to why environmental review is not needed, including by addressing in more detail CP's argument that CSX underestimates traffic that may be rerouted from the Northern Route to the Southern Route. CSX does not adjust its originally projected estimate of no more than a two-train per-day increase on any line segment by 2027, but in response to the comments includes an additional verified statement from Mr. Wallace explaining in more detail why existing rail traffic patterns would not be expected to change significantly through 2027 and why the diversion of either CSX, NSR, or CP traffic to the Southern Route would not be significant. (CSX Rebuttal, V.S. Wallace 3-7.)

Although CSX states that rerouting substantial traffic from the Northern Route to the Southern Route is highly unlikely, it explains that it nonetheless revised its projections to account for the possibility that some traffic could be diverted. To do so, another CSX witness, Dr. David Reishus, performed an analysis to quantify the amount of PAS traffic on the Northern Route that could potentially be rerouted. Dr. Reishus started by assuming that half the NSR and CP traffic on the Northern Route could be rerouted to the Southern Route.<sup>14</sup> (*Id.* at 7-9). Based on Dr. Reishus' analysis, CSX calculated that an additional 202,800 total gross ton-miles could potentially be rerouted to the Southern Route, including over the Worcester-Ayer segment. (*Id.*, Ex. A.) CSX calculates that once that additional volume is factored in, traffic on the Worcester-Ayer segment could now result in a 92% increase of MGTM by 2027, which is still under the Board's 100% MGTM threshold for environmental review. (*Id.*)

---

<sup>14</sup> Dr. Reishus excluded certain groups of traffic that are more likely to stay on the Northern Route because of routing efficiency. (CSX Rebuttal, V.S. Wallace 8-9.)

## DISCUSSION AND CONCLUSIONS

As the Board explained in Decision No. 4, the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4370m-12 (NEPA), requires that the Board take environmental impacts into account in its decision making. Under both the regulations of the Council on Environmental Quality (CEQ) implementing NEPA and the Board's own environmental regulations, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the Board to prepare an EIS. See 49 C.F.R. §§ 1105.4(f), 1105.6(a), 1105.10(a). Actions that may or may not have a significant environmental impact ordinarily require the Board to prepare a more limited EA. See 49 C.F.R. §§ 1105.4(d), 1105.6(b), 1105.10(b). Actions with environmental effects that are ordinarily insignificant may be excluded from NEPA review without a case-by-case environmental review. See 49 C.F.R. § 1105.6(c). Such activities are covered by "categorical exclusions," which CEQ defines as "categories of actions that normally do not have a significant effect on the human environment, and therefore do not require preparation of an environmental assessment or environmental impact statement." 40 C.F.R. § 1501.4.

In its environmental regulations, the Board has promulgated several categorical exclusions. As pertinent here, a rail merger is a classification of action that normally requires no environmental review as long as certain thresholds would not be exceeded. See 49 C.F.R. §§ 1105.6(b)(4), 1105.6(c)(1)(i). The thresholds that are typically applicable to a transaction such as this are the air quality thresholds at 49 C.F.R. § 1105.7(e)(5).<sup>15</sup> These thresholds differ depending on whether a rail line segment is in an area designated as in "attainment" or "nonattainment" with the National Ambient Air Quality Standards established under the Clean Air Act.<sup>16</sup> For rail lines located in attainment areas, such as the lines at issue here, an EA will normally be prepared if the proposed action would result in (1) an increase of at least eight trains per day on any segment of rail line affected by the proposal, (2) an increase in rail traffic of at least 100% (measured in annual gross ton-miles), (3) an increase in carload activity at rail yards of at least 100%, or (4) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment. See 49 C.F.R. § 1106.6(b)(4); 49 C.F.R. § 1105.7(e)(5)(i).<sup>17</sup>

---

<sup>15</sup> The Board uses air quality thresholds as an indicator of whether an environmental review is needed. If the thresholds are exceeded, and an environmental review is performed, that review would not be limited to issues of air quality.

<sup>16</sup> If the air quality in a geographic area meets or is cleaner than the national standard, it is called an "attainment area." Areas that do not meet the national standard are called nonattainment areas.

<sup>17</sup> For rail lines in nonattainment areas, the thresholds are lower. See 49 C.F.R. § 1105.7(e)(5)(ii). OEA has confirmed here that none of the lines on which there would be an increase in traffic pass through any nonattainment areas. In addition, the energy thresholds at 49 C.F.R. § 1105.7(e)(4) and the truck traffic thresholds at 49 C.F.R. § 1105.7(e)(5) are not relevant here because no diversion of rail carloads to motor carriage is expected as part of the Merger Transaction and the Related Transactions.



If an agency determines that a categorical exclusion applies to a proposed action, the agency “shall evaluate the action for extraordinary circumstances in which a normally excluded action may have a significant effect,” thus requiring preparation of either an EA or an EIS. Decision No. 4, slip op. at 24; see also 49 C.F.R. § 1105.6(d). But absent extraordinary circumstances, once a project is found to fit within a categorical exclusion, no further environmental review under NEPA is warranted.

Based on all of the available information in the record, and in consultation with OEA, the Board affirms its preliminary conclusion that an environmental review is not required in this proceeding. No commenter has specifically argued that the applicable thresholds for environmental review contained in the Board’s environmental regulations—a traffic increase of eight trains per day on any segment or a 100% increase in rail traffic or gross ton miles—have been met here. Nor has any commenter offered alternative traffic projections or any other evidence to specifically challenge the projections presented by CSX. As for other environmental-related comments, CSX states that it is working with the parties and communities to address their concerns. Ultimately, no commenter has asked for preparation of an EA or an EIS or identified extraordinary circumstances arising from the Merger Transaction or Related Transactions that would create significant environmental effects that would warrant an environmental review.

*Environmental Thresholds.* The record does not demonstrate an increase in traffic on any segment that would surpass the Board’s environmental thresholds. No commenter has specifically challenged CSX’s projections for train increases or MGTM. CSX’s maximum projected two-train per-day increase in train traffic is well below the applicable eight-train per-day increase threshold for environmental review in the Board’s regulations. The only segment that comes close to exceeding the Board’s 100% MGTM threshold is the Worcester-Ayer segment, which, according to CSX’s projections, could potentially reach 203 MGTM in 2027. This would represent a 92% increase over its most conservative baseline of “no action” growth of 106 MGTM, but it is still short of the 100%-increase threshold.

As noted, the State of Vermont questions the “commercial underpinnings” of the proposed merger, noting that “CSXT portrays the anticipated growth in traffic volumes to simply track with market conditions, with little additional growth, if any, attributable to the merger.” (Vermont Reply to CSX Suppl. 1.) CP also argues that CSX’s projections for traffic that would be diverted from the Northern Route to the Southern Route are understated. (CP Reply 15-17.) CSX makes broad statements during this proceeding that one of the benefits of the Merger Transaction and Related Transactions would be the possibility for additional traffic growth from new marketing opportunities.<sup>18</sup> However, no commenters have provided specific alternative

---

<sup>18</sup> For example, CSX states that “the largest refinery in Canada, located in New Brunswick, will have new opportunities to move energy-related products in efficient single-line service to markets on CSXT.” (Revised Appl., V.S. Pelkey 8.) CSX also notes that “the Proposed Transaction will result in an improved service product and cost profile that will allow CSX to compete for traffic that originates in northern Maine and New Brunswick” because the

traffic projections or questioned CSX’s methodology supporting its claim that there would not be substantial growth through 2027. Although some commenters argue that CSX’s traffic projections are understated, CSX presented its reasoning for why it believes existing rail traffic patterns should not change significantly through 2027. (CSX Rebuttal, V.S. Wallace 5-7.) In its rebuttal, CSX also revised its projections to account for the possibility that more traffic might be rerouted to the Southern Route. (Id. at 7-9.) Ultimately, CSX’s projections are just that—they are projections or forecasts, which inherently involve some uncertainty. Accordingly, even though some commenters have raised questions about how much growth would actually occur on the Worcester-Ayer segment, without specific alternative projections or challenges to CSX’s methodology, the Board finds CSX’s explanations to be sufficient.

Moreover, even though the maximum MGTM numbers projected by CSX are close to the applicable 100% increase threshold on one segment, CSX’s data shows that it is still well below the eight-train per-day threshold, which the Board has generally considered to be the more significant of the two. In Missouri Central Railroad—Acquisition & Operation Exemption—Lines of Union Pacific Railroad (Lee’s Summit), FD 33508 et al. (STB served Apr. 30, 1998) aff’d sub nom., Lee’s Summit, Mo. v. STB, 231 F.3d 39 (D.C. Cir. 2000), the Board rejected an argument that an applicant exceeded the 100%-increase threshold where traffic would increase from no trains to one train per day each way. Lee’s Summit, FD 33508 et al., slip op. at 7. The facts in that case were different, in that it involved a rail line that had been inactive for over 20 years; accordingly, the Board found that the situation was more akin to reinstatement of service over a discontinued line, where environmental review would only be required if the eight-train per-day threshold was exceeded. The Board nevertheless made clear that the extent of the per-day train increase informs whether the 100% standard applies:

[opponents] have cited no instance, nor are we aware of any, where an increment of one train a day each way as proposed by [applicant] has been deemed to suffice to trigger our environmental reporting and documentation requirements. The fact that the 100% standard is paired in the same sentence with an absolute standard of an increase of eight trains a day suggests that the 100% standard applies to an anticipated increment that greatly exceeds the one train a day each way operations proposed by [applicant].

Id.

In short, the fact that the increase in traffic as a result of the Merger Transaction and Related Transactions would only account for an increase of two trains per day weighs against requiring an environmental review. Given the record here, the Board is satisfied that the environmental thresholds in the Board’s regulations have not been exceeded and do not require the agency to conduct an environmental review.

---

transit miles will be shorter. (Id., V.S. Wallace 17-18.) CSX also states that, “[o]ver time, CSXT expects the proposed transaction to unlock commercial opportunities for traffic moving between Saint John and the Eastern Seaboard or parts of CSXT’s network beyond.” (Id., V.S. Wallace 19.)

*Other Environmental Concerns.* The Board finds that none of the other environmental comments involve “extraordinary circumstances” that warrant an environmental review.

MWRA has raised concerns about the impact the Merger Transaction and Related Transactions would have on the Wachusett Reservoir, which is located adjacent to the Worcester-Ayer segment. According to both MWRA and CSX, however, the parties have been discussing an agreement that would address MWRA’s concerns. (MWRA Reply 3; CSX Rebuttal 93-94.) Moreover, CSX states that even if a written agreement cannot be reached, it would not object to several of MWRA’s requests being imposed as conditions to Board approval. (CSX Rebuttal 94.) In particular, CSX states that it would agree to upgrade and maintain this track to FRA Class 3 standards, operate trains at no more than 25 mph, and share information on the hazardous commodities being shipped on the line and any relevant derailment, spill, or release, among other things. (*Id.*)

As noted, in Decision No. 4 the Board preliminarily concluded that the concerns relating to the reservoir would exist even without the Merger Transaction and Related Transactions. The filings that have been submitted since then contain no argument or evidence to alter that conclusion and do not request preparation of an EA or an EIS. Accordingly, the Board affirms its preliminary conclusion that the concerns relating to the Wachusett Reservoir do not constitute extraordinary circumstances that would warrant an environmental review.

The local communities that have raised additional environmental-related concerns are not located near the Worcester-Ayer segment, which is the only segment that even comes close to exceeding one of the Board’s thresholds for environmental review. Because these local communities would experience only minor transaction-related traffic increases that are well under the Board’s thresholds, any potential impacts do not justify conducting an environmental review. Ultimately, most rail transactions will result in some changes to rail traffic. The Board’s environmental regulations are specifically designed to require environmental review only for those transactions that are likely to have significant environmental impacts. The communities here have not presented “extraordinary circumstances” that warrant reclassifying these transactions under the Board’s environmental regulations. See 49 C.F.R. § 1105.6(d).

Voorheesville’s principal concern appears to be related to its interest in implementing a Quiet Zone. CSX states that it has met several times with Voorheesville to discuss this issue and may provide assistance regarding the Quiet Zone project and commit to manage its operations in Voorheesville so as to reduce noise impacts. (CSX Env’t Reply 5, Sept. 24, 2021.) As for Voorheesville’s concerns about plans to rehabilitate CSX’s existing line, and about blocked crossings resulting from longer trains, CSX notes that improved warning devices (gates, lights, and bells) are planned as part of the rehabilitation project, which would help to alleviate any issues at crossings. (*Id.* at 8-9.) In addition, Voorheesville’s concerns about falling debris from the overpass at Maple Avenue would exist regardless of the Merger Transaction and Related Transactions and, in any event, likely would not be noticeably impacted by the transactions.<sup>19</sup>

---

<sup>19</sup> According to CSX, it has confirmed that the overpass has no structural deficiencies and commits to working with Voorheesville to address cosmetic issues associated with the concrete walls. (CSX Env’t Reply 10-11, Sept. 24, 2021.)

CSX states that AFL's concerns regarding the effects of a two-trains per-day increase on the library, which is adjacent to the existing NSR line, largely arise from preexisting train traffic and are not merger-related. CSX adds that NSR and CSX have met with AFL representatives in the hope of reaching a mutually acceptable resolution to the issues raised by AFL. (CSX Env't Reply 11, Sept. 24, 2021.)<sup>20</sup> CSX further explains that the concerns raised by residents of Islington Creek relate to existing Springfield Terminal Railroad operations rather than the Merger Transaction and that CSX does not plan material changes in operations in New Hampshire. (*Id.* at 15-16.) CSX states that it will work with these residents to reduce the impact of rail operations on their community and that its newer locomotives will reduce fumes and noise. (*Id.* at 16.)

The Board strongly encourages CSX to continue working with these communities and parties to resolve their concerns. CSX should promptly notify the Board of any agreements it enters into with these communities and parties, and the Board may consider imposing appropriate mitigation based on the information that is available when the record closes. However, for the reasons discussed above, no "extraordinary circumstances" have been presented that warrant an environmental or historic review of the Merger Transaction and Related Transactions.

*Safety Integration Plan.* Finally, CSX is preparing a Safety Integration Plan (SIP) under the Board's regulations at 49 C.F.R. §§ 1106 and 1180.1(f)(3) and the FRA regulations at 49 C.F.R. § 244.9. The SIP is a complete written plan prepared in accordance with FRA guidelines or regulations specifying how Applicants would ensure safe operations throughout the merger-implementation process if the merger transaction is approved. In Decision No. 4, the Board directed Applicants to file a proposed SIP with OEA and FRA for their review by August 30, 2021, and provided that public comments in response to the proposed SIP should be filed by October 4, 2021. Applicants filed a proposed SIP, and no public comments on the proposed SIP were submitted. The Board understands that CSX is working with FRA to revise its proposed SIP. The revised SIP should be filed with the Board when it is completed. If the Board authorizes the Merger Transaction and Related Transactions and adopts the SIP, the Board will require compliance with the SIP as a condition to its authorization. 49 C.F.R. § 1106.4(b)(4).

It is ordered:

1. The preliminary conclusion in Decision No. 4 that no environmental or historic review is required is affirmed, for the reasons set forth above.
2. This decision is effective on the service date.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

---

<sup>20</sup> NSR filed a rebuttal on October 18, 2021, stating that "CSXT, NS and the Altamont Free Library have set up a very robust line of communication and intend to keep that line of communication open should additional concerns arise." (NSR Rebuttal 13.)