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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

Decided: December 10, 2021

AGENCY: Surface Transportation Board.

ACTION: Decision No. 6 in Docket No. FD 36472; Notice of Public Hearing; Page Limit for Final Briefs.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing in this docket on January 13, 2022. The hearing will be entirely virtual and held online. If necessary, the hearing will continue on January 14, 2022. All interested persons are invited to appear. Additionally, the Board will set a limit of 20 pages on the filing of final briefs.

DATES: The hearing will be held on January 13, 2022, beginning at 9:30 a.m. Persons may participate online using video conferencing. The Board will issue a subsequent decision with instructions for participation and public observation of the hearing. The subsequent decision will indicate whether the hearing will be conducted over one or two days and include the schedule of appearances for speakers.

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<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.

Any person wishing to speak at the hearing shall file with the Board by December 20, 2021, a notice of intent to participate (identifying the entity, if any, the person represents, the proposed speaker, the amount of time requested, and summarizing the key points that the speaker intends to address). The notices of intent to participate are not required to be served on the parties of record; they will be posted to the Board's website when they are filed.

ADDRESSES: All filings, referring to Docket No. FD 36472 et al., should be filed with the Surface Transportation Board via e-filing on the Board's website.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245-0391. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: 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, CSX Transportation Inc., 747 Merger Sub 2, Inc., Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Pan Am Southern, LLC, Maine Central Railroad Company, Northern Railroad, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company (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) for which parties seek approval.

Numerous parties have filed replies or comments to the Revised Application and Applicants' other filings,<sup>2</sup> including: the U.S. Department of Justice; the U.S. Department of Transportation; the Massachusetts Department of Transportation and Massachusetts Bay Transportation Authority (MBTA) (MassDOT/MBTA); the Massachusetts Water Resources Authority; the State of Vermont (acting through its Agency of Transportation (VTrans)); Vermont Rail System (VRS); Canadian Pacific Railway; the National Railroad Passenger Corporation (Amtrak); the Northern New England Passenger Rail Authority; Republic Services, Inc., ECDC Environmental, L.C. and Devens Recycling Center, LLC (collectively, Republic);

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<sup>2</sup> Applicants submitted their original application on February 25, 2021, requesting that the Board treat the transaction as a "minor" transaction, but the Board found the proposed transaction should be classified as a "significant" transaction. The Board therefore considered the February 25, 2021 submission a pre-filing notification, as required in "significant" transactions. See Decision No. 1. On April 26, 2021, Applicants submitted an application for a "significant" transaction, but by decision served May 26, 2021, the Board rejected the application because it failed to include all required information. See Decision No. 3. Several parties submitted filings in response to the two original applications but not the Revised Application. To the extent that these filings address the merits of the proposed Merger and Related Transactions, the Board will consider the filings as part of its final decision on the merits.

the American Chemistry Council; The Chlorine Institute; the New Hampshire Department of Transportation; Housatonic Railroad Company, Inc.; Pioneer Valley Railroad Company, Inc., U.S. Senator Susan Collins (Maine); New Hampshire Governor Christopher T. Sununu; U.S. Representative Chris Pappas (New Hampshire); U.S. Representatives Pappas and Ann McLane Kuster (New Hampshire); U.S. Representative Richard Neal (Massachusetts); various state senators and representatives; local governmental officials; railroad unions;<sup>3</sup> and local community interests.<sup>4</sup> Applicants have also submitted letters of support from nearly 100 shippers;<sup>5</sup> U.S. Senator Angus S. King, Jr. (Maine); Maine Governor Janet Mills; additional state and local representatives; the Northern New England Passenger Rail Authority; One SouthCoast Chamber; and the Greater Worcester Regional Chamber of Commerce, among others. In the replies, several parties have raised concerns about the impact of the Merger and Related Transactions on competition and passenger service. CSX, NSR, and B&E filed separate rebuttals, in which they dispute these assertions.

Section 11324(a) requires the Board to “hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.” In Decision No. 4, the Board stated that it would decide whether to conduct a public hearing in a later decision, after the record had been more fully developed. Decision No. 4, slip op. at 30 n.43. Based on the comments that have been submitted, the Board finds that a public hearing, which will provide Board Members an opportunity to directly question the Applicants and the other interested persons about the issues that have been raised, is in the public interest.

In Decision No. 4, the Board stated that, if it were to hold a public hearing, it would be scheduled between the filing of rebuttals and final briefs. Decision No. 4, slip op. at 2. Under the procedural schedule, rebuttals in support of the Revised Application and Related Transactions were due on October 18, 2021,<sup>6</sup> and final briefs are due by January 3, 2022. However, the Board finds that it would be more beneficial to hold the public hearing after the final briefs are submitted. Accordingly, the hearing will be held on January 13, 2022, and will continue on January 14, 2022, if necessary. As such, the Board expects that January 13, 2022, or January 14, 2022, will be considered the close of the record (depending on whether the hearing is

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<sup>3</sup> The Brotherhood of Maintenance of Way Employees Division/IBT, Brotherhood of Railroad Signalmen, International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical Division, and National Conference of Firemen and Oilers, 32BJ/SEIU (filing jointly as Allied Rail Unions); American Train Dispatchers Association; Brotherhood of Locomotive Engineers and Trainmen National Division and the Brotherhood of Locomotive Engineers and Trainmen General Committee of Adjustment 120; International Brotherhood of Electrical Workers, AFL-CIO; International Federation of Professional and Technical Engineers, Local 202; and the Transportation Division of the Sheet Metal, Air, Rail, and Transportation Workers.

<sup>4</sup> Village of Voorheesville, N.Y.; the Altamont Free Library; the neighborhood of Islington Creek, N.H.; and Friends of the Souhegan Valley Rail Trail.

<sup>5</sup> See Revised Appl., Ex. 23.

<sup>6</sup> Rebuttals in support of responsive (including inconsistent) applications were due on November 17, 2021, but no responsive applications were filed.

one or two days long). In accordance with 49 C.F.R. § 1180.4(e)(3), the Board's decision would be issued no later than 90 days after the close of the record. The Board recognizes that the date of the hearing will extend the procedural schedule, including the effective date for a final Board decision, by 10 or 11 days (depending on whether the hearing lasts one or two days). However, even with this extension, Applicants would still have a reasonable amount of time to complete the transaction in accordance with their own schedule if approval is granted.

The Board will issue, prior to the hearing date, a decision setting a schedule of appearances for speakers, with specific allotments of time for presentations. Such allotments may be limited, and persons wishing to speak at the hearing should be prepared to keep their comments as succinct as possible, to ensure an opportunity for all interested persons to be heard. The schedule will also provide, among other things, that Applicants will speak first, and that they may reserve part of their time for a closing statement after all other persons have spoken, if they so choose.

Persons speaking at the hearing are encouraged to use their time to call attention to the points they believe to be particularly important. The purpose of the hearing is not to restate the written comments previously submitted, but to summarize and emphasize the key points of a party's case or the speaker's positions, and to provide an opportunity for questions that the Board may have regarding the matters at issue in this proceeding.

Lastly, the Board will set the limit for final briefs at 20 pages.<sup>7</sup> The Board notes that, like the hearing testimony, final briefs are not intended to serve as an opportunity for parties to raise new evidence or arguments, but to provide a concise summary of the parties' positions. The Board has determined that 20 pages is a sufficient length for this purpose.

**BOARD RELEASES AND TRANSCRIPT AVAILABILITY:** Decisions and notices of the Board, including this notice, are available on the Board's website at [www.stb.gov](http://www.stb.gov). The Board will issue a separate notice containing the schedule of appearances, as well as instructions for participating in and observing the hearing. A recording of the hearing and a transcript will be posted on the Board's website when they become available.

It is ordered:

1. A public hearing will be held online using video conferencing on January 13, 2022. The hearing will resume on January 14, 2022, if necessary.
2. By December 20, 2021, any person wishing to speak at the hearing shall file with the Board a notice of intent to participate identifying the entity, if any, the person represents, the proposed speaker, the amount of time requested, and summarizing the key points that the speaker intends to address.

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<sup>7</sup> The Board stated in Decision No. 4 that it would determine the page limits for final briefs in a later decision, after the record had been more fully developed.

3. Notices of intent to participate will be posted to the Board's website and need not be served on parties of record, any hearing participants, or other commenters.

4. Final briefs are limited to no more than 20 pages.

5. The procedural schedule is revised as follows:

Service date of final decision: No later than April 13 or 14, 2022

Effective date of final decision: No later than May 13 or 14, 2022

6. This decision is effective on its service date.

7. This decision will be published in the Federal Register.

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