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SERVICE DATE – JULY 30, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36472¹

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: July 26, 2021.

AGENCY: Surface Transportation Board.

ACTION: Decision No. 4 in STB Finance Docket No. 36472; Notice of Acceptance of Application and Related Filings; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the revised application filed on July 1, 2021, 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), Northern Railroad (Northern), Portland Terminal Company (Portland Terminal), Springfield Terminal Railway Company (Springfield Terminal), Stony Brook Railroad Company (Stony Brook), and Vermont & Massachusetts Railroad Company (V&M) (collectively, Applicants). The application will be referred to as the Revised Application. 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.

¹ 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.

In addition to the Revised Application, there are several filings for transactions related to the Merger Transaction, including: four notices of exemption for Norfolk Southern Railway Company (NSR) to acquire trackage rights over existing lines owned by four separate railroads; a petition for exemption to allow Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad (B&E), to replace Springfield Terminal as the operator of Pan Am Southern LLC (PAS); and a notice of exemption to allow SMS Rail Lines of New York, LLC (SMS) to discontinue service and terminate its lease of a rail line known as the Voorheesville Running Track. These transactions will be referred to as the Related Transactions.

The Board finds that the Revised Application meets the requirements of 49 C.F.R. §§ 1180.4, 1180.6, and 1180.7 and is therefore complete. 49 C.F.R. § 1180.4(c)(7) (“A complete application contains all information for all applicant carriers required by these procedures, except as modified by advance waiver.”) Accordingly, the Revised Application is accepted. The Board adopts a procedural schedule for consideration of the Revised Application and Related Transactions, under which the Board’s final decision would be issued by April 1, 2022, and would become effective by May 1, 2022.

DATES: The effective date of this decision is **July 30, 2021**.

Transportation Merits. Any person who wishes to participate in this proceeding as a Party of Record must file, no later than **August 20, 2021**, a notice of intent to participate if they have not already done so. Descriptions of anticipated responsive applications, including inconsistent applications, are due by **August 27, 2021**. Petitions for waiver or clarification with respect to such applications are also due by **August 27, 2021**. Comments, protests, requests for conditions, and any other evidence and argument in opposition to the Revised Application or Related Transactions are also due by **August 27, 2021**. This include any comments from the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (USDOT). All responsive applications, including inconsistent applications, are due by **September 28, 2021**. Responses to comments, protests, requests for conditions, and other opposition—including responses to DOJ and USDOT filings—are due by **October 18, 2021**. Responses to responsive applications, including inconsistent applications, are also due by **October 18, 2021**. Rebuttal in support of the Revised Application and Related Transactions is also due by **October 18, 2021**. Rebuttals in support of responsive applications, requests for conditions, and other opposition must be filed by **November 17, 2021**. Final briefs will be due by **January 3, 2022**. If a public hearing or oral argument is held, it will be held between the filing of rebuttals and final briefs on a date to be determined by the Board. The Board will issue its final decision by **April 1, 2022**, and the decision will become effective on **May 1, 2022**.

Environmental Review. As discussed below, CSXT is directed to file supplemental environmental information, which must be filed by **August 19, 2021** (though CSXT may request an extension). Absent any extensions, environmental comments must be filed by **September 17, 2021**, addressed to the attention of the Board’s Office of Environmental Analysis (OEA).

Safety Integration Plan. Applicants shall file a proposed Safety Integration Plan (SIP) with the OEA and the Federal Railroad Administration (FRA) by **August 30, 2021**. Comments

in response to the proposed SIP will be due on **October 4, 2021**. Applicants' response to comments filed regarding the SIP will be due on **October 18, 2021**.

For further information respecting dates, see the **Appendix** to this decision.

ADDRESSES: Any filing submitted in this proceeding should be filed with the Board via e-filing on the Board's website. In addition, one copy of each filing must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) CSX's² and 747 Merger Sub 2's representative, Anthony J. LaRocca, Steptoe & Johnson LLP, 1330 Connecticut Ave., N.W., Washington, DC 20036; (4) Systems',³ PAR's, and PAR Railroads' representative, Robert B. Culliford, Pan Am Systems, Inc., 1700 Iron Horse Park, North Billerica, MA 01862; and (5) any other person designated as a Party of Record on the service list.

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: On February 25, 2021, Applicants submitted an application for the proposed Merger Transaction and requested that the Board treat the transaction as a "minor" transaction. In Decision No. 1, served and published in the Federal Register (86 Fed. Reg. 16,009) on March 25, 2021, the Board found the proposed transaction should be classified as a "significant" transaction under 49 U.S.C. § 11325 and 49 C.F.R. § 1180.2(b), which must meet different procedural and informational requirements, and that Applicants' submission therefore could not be treated as an application. However, in that same decision, the Board determined that it would consider the February 25, 2021 submission a prefiling notification (referred to herein as the Prefiling Notice), as required in "significant" transactions, see 49 C.F.R. § 1180.4(b)(1), thus permitting Applicants to perfect their application by supplementing their submission with the requisite information for a "significant" transaction in accordance with the Board's regulations, between April 25 and June 25, 2021. The Board also required Applicants to submit the difference between the filing fee for a "minor" transaction (which Applicants had already paid) and the fee for a "significant" transaction.

On April 26, 2021, Applicants submitted an application for a "significant" transaction and paid the difference in filing fees. However, by decision served May 26, 2021, the Board concluded that the Applicants' significant application failed to include the information needed to satisfy the Market Analysis requirement for a "significant" transaction application under 49 C.F.R. § 1180.7. Decision No. 3, FD 36472 et al., slip op. at 2. Specifically, the Board found

² CSXT is a wholly owned subsidiary of CSXC. CSXC and CSXT are referred to collectively as CSX.

³ Systems directly and wholly owns PAR, which in turn directly and wholly owns four rail carriers: Boston & Maine, Maine Central, Portland Terminal, and Springfield Terminal. Boston & Maine directly and wholly owns Northern, as well as a 99.27% interest in Stony Brook and a 98% interest in V&M.

that the Market Analysis and supporting verified statements did not sufficiently describe “the impacts of the proposed transaction—both adverse and beneficial—on inter-and intramodal competition,” nor did they meet the other specific requirements for a Market Analysis, including the requirement for supporting data. *Id.* at 7.⁴ Because the Market Analysis was incomplete, the significant application was rejected. However, the Board held that Applicants were permitted to file a revised application to remedy the deficiencies identified in Decision No. 3. *Id.* at 15.

On July 1, 2021, Applicants submitted the Revised Application.⁵ As noted, Systems directly and wholly owns PAR, which in turn directly and wholly owns four rail carriers: Boston & Maine, Maine Central, Portland Terminal, and Springfield Terminal. Boston & Maine directly and wholly owns Northern, as well as a 99.27% interest in Stony Brook and a 98% interest in V&M. (Revised Appl. 6.) These seven rail carriers will be referred to collectively as the PAR Railroads. The PAR Railroads own rail lines and provide rail service on a freight rail network (PAR System) in New England, from Maine in the north to the Boston region in the south.⁶ Springfield Terminal operates rail service on the PAR System on behalf of the PAR Railroads pursuant to leases over lines owned and leased by the other PAR Railroads. (*Id.*)

Additionally, Boston & Maine owns a 50% interest in PAS, a Class II carrier. (*Id.*) PAS is a 50/50 joint venture between Boston & Maine and NSR.⁷ (*Id.*) The PAS lines include two main line corridors, referred to as the Patriot Corridor and the Knowledge Corridor. The Patriot Corridor runs east-west between milepost 467.4 at Mechanicville, N.Y., and milepost 311.97 near Willows, Mass., a distance of approximately 151.4 miles. (*Id.* at 39.) The Patriot Corridor includes a segment of rail line between Fitchburg, Mass., and Willows that is owned by Massachusetts Bay Transportation Authority (MBTA) and over which PAS has freight easement rights, and a segment owned by Canadian Pacific Railway Company (CP) between Mohawk Yard, N.Y., and Mechanicville and over which PAS has trackage rights. (Revised Appl., Ex. 13, Operating Plan 24.) The Patriot Corridor is sometimes referred to herein as the Northern Route.

⁴ Applicants are also required to submit an Operating Plan, which must be based on the Market Analysis. 49 C.F.R. § 1180.8(b). Because the Market Analysis was incomplete, the Board also held that the Operating Plan must be considered incomplete. Decision No. 3, FD 36472 et al., slip op. at 7 n.16.

⁵ Applicants submitted a public version and highly confidential version of their Revised Application. The public version is available on the Board’s website. The highly confidential version may be obtained subject to the provisions of the protective order issued by the Board on March 3, 2021.

⁶ The PAR System consists of approximately 808 route miles of rail lines, including approximately 724.53 owned and leased (including perpetual freight easement) route miles and approximately 83.62 trackage-rights route miles in Massachusetts, Maine, New Hampshire, and Vermont. (Revised Appl. 32.)

⁷ PAS’s network consists of approximately 425 route miles, including approximately 281.38 owned route miles (including perpetual freight easement) and approximately 143.62 trackage-rights route miles in Connecticut, Massachusetts, New Hampshire, New York, and Vermont. (Revised Appl. 32.)

The Knowledge Corridor runs north-south between milepost 183.4 at White River Junction, Vt., and milepost 0.0 at New Haven, Conn., a distance of approximately 183.4 miles. (*Id.*, Ex. 13, Operating Plan 24-25.) The Knowledge Corridor includes segments of rail line owned by New England Central Railroad (NECR), a subsidiary of Genesee & Wyoming, Inc. (GWI), and the National Railroad Passenger Corporation (Amtrak), each of which PAS has trackage rights over, and a segment owned by the Massachusetts Department of Transportation (MassDOT), over which PAS has freight easement rights. (*Id.*)

Springfield Terminal, also a Class II rail carrier, operates PAS as PAS's agent. (Revised Appl. 6.) NSR has reserved trackage rights on the PAS line between Mechanicville and Ayer, Mass., and rights to interchange certain traffic with other connecting regional lines. (Revised Appl., Ex. 22-E, V.S. Reishus 45.) Springfield Terminal currently operates NSR trains over the PAS line between Mechanicville and Ayer, pursuant to a haulage agreement between PAS and NSR. (Revised Appl., Ex. 13, Operating Plan 13.)

CSXT, a Class I rail carrier, owns and operates approximately 19,500 miles of railroad in 23 states⁸ and the District of Columbia, as well as in the Canadian Provinces of Ontario and Quebec. (Revised Appl. 32.) The CSXT network includes a rail line between the Boston, Mass. region and Rotterdam Junction, N.Y., via Selkirk, N.Y. (*Id.* at 34.) CSXT primarily interchanges traffic with Springfield Terminal/PAS at Rotterdam Junction, and with Springfield Terminal/PAR at Barbers Station, Mass. (*Id.* at 35.)

Merger Transaction. Under the proposed Merger Transaction, CSX and 747 Merger Sub 2 would acquire control of the PAR Railroads, and CSXT would merge the PAR Railroads, except V&M, into CSXT.⁹ (Revised Appl. 6-7.) As CSXT 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.) Applicants state that CSXT, NSR, and GWI have entered into agreements regarding the operation of PAS upon consummation of the Merger Transaction, specifically: (1) a settlement agreement between CSXT and NSR (NSR Settlement Agreement), which includes an agreement relating to operations at Ayer; and (2) a Term Sheet Agreement among CSXT, NSR, and GWI (Term Sheet Agreement). (*Id.* at 8-9.) Applicants state that these two agreements contemplate transactions that are related to the Merger Transaction and require Board authorization. These Related Transactions are discussed in the following section.

⁸ The states are: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia.

⁹ Specifically, Systems would be merged with 747 Merger Sub 1, Inc., with Systems surviving. Immediately thereafter, Systems would be merged with 747 Merger Sub 2, with 747 Merger Sub 2 surviving and the separate corporate existence of Systems ceasing. 747 Merger Sub 2, as the surviving corporation, would be renamed Pan Am Systems, Inc., and would be a wholly owned subsidiary of CSXC. Concurrent with closing, CSXC would contribute Pan Am Systems, Inc., and all of its subsidiaries to CSXT. CSXT would thereafter control the rail carrier subsidiaries of Pan Am Systems, Inc., and at a future time yet to be determined, would merge those subsidiaries, except V&M, into CSXT. (Revised Appl. 6-7.)

Related Filings. Several notices of exemption and a petition for exemption were filed in connection with the Revised Application.

NSR Trackage Rights Authority. NSR filed four verified notices of exemption under 49 C.F.R. § 1180.2(d)(7) for overhead trackage rights pursuant to four separate trackage rights agreements with CSXT, Providence & Worcester Railroad Company (P&W) (a GWI subsidiary), Boston & Maine, and PAS.¹⁰ Specifically:

- In Norfolk Southern Railway—Trackage Rights Exemption—CSX Transportation, Inc., Docket No. FD 36472 (Sub-No. 1), NSR seeks approximately 161.5 miles of overhead trackage rights on CSXT’s mainline between approximately Voorheesville, N.Y. (at or near milepost QG 22.5) and Worcester, Mass. (at or near milepost QB 44.5) (inclusive of appurtenant passing tracks and sidings).
- In Norfolk Southern Railway—Trackage Rights Exemption—Providence & Worcester Railroad, Docket No. FD 36472 (Sub-No. 2), NSR seeks approximately 2.90 miles of overhead trackage rights on P&W’s mainline between a connection with the tracks of CSXT at Worcester at milepost 0.0, over Track 1 extending from the east side of Green Street to the point of merger of said Track 1 and the so-called Main Track at milepost 1.05, south of Garden Street, and over the Main Track thereafter from milepost 1.05 to P&W’s Gardner Branch baseline station 153+50, which is the point of connection with the tracks of Boston & Maine at Barbers Station at milepost 2.90.
- In Norfolk Southern Railway—Trackage Rights Exemption—Boston & Maine Corp., Docket No. FD 36472 (Sub-No. 3), NSR seeks approximately 22.08 miles of overhead trackage rights on Boston & Maine’s line from milepost X 2.92 at Barber, Mass.¹¹ and connection to P&W, to milepost X 25.0 at Harvard, Mass., and connection to PAS.¹²

¹⁰ NSR has filed public and highly confidential versions of the trackage rights agreements in each of these sub-dockets. Persons seeking access to the highly confidential versions must do so pursuant to the protective order adopted in this proceeding by a decision served on March 3, 2021.

¹¹ In the verified notice, NSR uses milepost X 2.92 at Barber to describe the overhead trackage rights it seeks. (NSR Notice 3, FD 36472 (Sub-No. 3).) The trackage rights agreement governing this transaction refers to this point as being in Barbers Station. (*Id.* at Ex. 2.)

¹² If the Merger Transaction is approved and consummated, this Boston & Maine line would be owned by CSXT. (*Id.* at 2 n.1.)

- In Norfolk Southern Railway—Trackage Rights Exemption—Pan Am Southern LLC, Docket No. FD 36472 (Sub-No. 4), NSR seeks approximately 3.01 miles of overhead trackage rights on PAS's line from milepost X 25.0 at Harvard, and a connection to Boston & Maine, to milepost X 28.01 at Ayer.¹³

The combination of these four trackage rights agreements would create a new route that would allow NSR to move intermodal and automobile trains from Voorheesville in eastern New York State to Ayer. This route is sometimes referred to herein as the Southern Route. Applicants state that these trackage rights comprising the Southern Route would give NSR the capability to provide double-stack intermodal service by avoiding a tunnel constraint that exists on the Patriot Corridor, i.e., the Northern Route. (Revised Appl., Ex. 12, Market Analysis 24.) Specifically, the height limitations of the Hoosac Tunnel on the Northern Route prevent NSR from double-stacking containers. (Revised Appl. 24.) Pursuant to these trackage rights, NSR's trains could instead take the Southern Route and NSR could double-stack its trains.

NSR states that the trackage rights being acquired pursuant to these verified notices of exemption would not take effect until the Merger Transaction is approved and consummated. (NSR Notice 2 nn.1, 4, FD 36472 (Sub-No. 1); NSR Notice 2 nn.1, 4, FD 36472 (Sub-No. 2); NSR Notice 2 nn.1, 4, FD 36472 (Sub-No. 3); NSR Notice 2 nn.1, 4, FD 36472 (Sub-No. 4).) It also states that it does not anticipate any adverse labor impacts as a result of these transactions; however, it agrees to the imposition of the employee protective conditions established in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980). (NSR Notice 6, FD 36472 (Sub-No. 1); NSR Notice 6, FD 36472 (Sub-No. 2); NSR Notice 6, FD 36472 (Sub-No. 3); NSR Notice 5-6, FD 36472 (Sub-No. 4).)

B&E Operating Authority. In Pittsburg & Shawmut Railroad—Operation Exemption—Pan Am Southern LLC, Docket No. FD 36472 (Sub-No. 5), B&E filed an amended petition for 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 enter into contracts to operate on behalf of PAS, and to accept an assignment from Springfield Terminal of Springfield Terminal's current rights to operate the PAS lines, totaling approximately 425 route miles of rail line and incidental trackage rights. (B&E Amended Pet. 3, FD 36472 (Sub-No. 5).) B&E is a wholly owned subsidiary of GWI.¹⁴ B&E notes that its petition is filed as a transaction integrally related to, and dependent upon, approval of the Merger Transaction. (B&E Amended Pet. 1-2, FD 36472 (Sub-No. 5).)

¹³ As noted, PAS is jointly owned by NSR and Boston & Maine. (NSR Notice at 2, FD 36472 (Sub-No. 4).) If the Merger Transaction is approved and consummated, the PAS lines—including the line that is the subject of this trackage rights proceeding—would be jointly owned by NSR and CSXT. (*Id.* at n.1.)

¹⁴ According to its petition, B&E is the same entity as Pittsburg & Shawmut Railroad, LLC (P&S), an existing Class III carrier, but the business name Berkshire & Eastern Railroad would be used only for P&S's operations of PAS lines. (B&E Amended Pet. 3 n.5, FD 36472 (Sub-No. 5).) On July 1, 2021, B&E filed a supplement to its Amended Petition, in response to a Board request for clarification regarding: (i) B&E's relationship with P&S and P&S's parent

As noted above, Springfield Terminal, an affiliate of PAR, currently operates PAS as PAS's agent. (Revised Appl. 6.) Springfield Terminal also operates NSR trains over the PAS-owned line between Mechanicville and Ayer pursuant to a haulage agreement between PAS and NSR. (Revised Appl., Ex. 13, Operating Plan 13.) According to Applicants, CSXT has ensured that there will be no anticompetitive effects as a result of its acquisition of 50% ownership of PAS by entering into an agreement with NSR and GWI to have Springfield Terminal replaced by B&E as operator of PAS. (Revised Appl. 12.)

B&E indicates that the PAS lines that B&E would operate over connect with several other railroads, including CSXT, NSR, Delaware and Hudson Railway Company, Inc./CP, Boston & Maine, Batten Kill Railroad, Connecticut Southern Railroad, Inc. (CSO), NECR, P&W, and the Vermont Railway System. (B&E Amended Pet. 3-4, FD 36472 (Sub-No. 5).) NECR, CSO, and P&W—like B&E—are owned, directly or indirectly, by GWI. (*Id.* at 4.) B&E states that, as PAS's operator, it would maintain PAS's access to all of the carriers that connect to the PAS lines and that all shippers that have access to PAS would continue to have access to PAS. (*Id.*) It further states that it would be responsible for setting rates for PAS in a non-discriminatory fashion as to all rail carriers that have the ability to interchange traffic with PAS or otherwise connect to PAS. (*Id.* at 4-5.)

B&E states that its contract to operate the PAS lines would not become effective unless and until the Merger Transaction is approved by the Board and consummated by the Applicants, the exemption sought by B&E becomes effective, and Springfield Terminal and B&E enter into implementing agreements with the relevant labor unions representing Springfield Terminal employees. (*Id.* at 6.)¹⁵ According to B&E, it currently has no employees, but intends to offer employment to Springfield Terminal employees working on the PAS lines with a goal of filling 159 positions. (*Id.* at 15.) B&E further asserts that the standard labor protection requirements of 49 U.S.C. § 11326(a), as set forth by in New York Dock Railway—Control—Brooklyn Eastern District (Terminal) (New York Dock), 360 I.C.C. 60 (1979), should apply to this transaction. (Revised Appl. 15-16.)

Discontinuance Authority Over NSR Line. In SMS Rail Lines of New York, LLC—Discontinuance Exemption—in Albany County, N.Y., Docket No. AB 1312X, NSR filed, on behalf of SMS and with SMS's consent, a verified notice of exemption for SMS to discontinue common

company, Buffalo & Pittsburgh Railroad, Inc. (BPRR), and (ii) which of these entities would be providing rail service as PAS's operating carrier. Decision No. 3, FD 36472 et al., slip op. at 14-15. B&E states that P&S is currently a residual common carrier by virtue of its ownership of active rail lines in Pennsylvania, but that those lines are currently operated by P&S parent company, BPRR. (B&E Suppl. 2, FD 36472 (Sub-No. 5).) BPRR is itself a subsidiary of GWI. According to B&E, BPRR would continue to operate P&S's lines in Pennsylvania, but P&S—doing business as B&E—would operate the PAS lines as PAS's agent. (*Id.* at 2-3.)

¹⁵ CSXT, NSR, and GWI have agreed that, if the Merger Transaction is consummated prior to the replacement of Springfield Terminal by B&E and the initiation of PAS operations by B&E, then Springfield Terminal would continue to operate PAS until Springfield Terminal is replaced as the PAS operator. (Revised Appl. 9.)

carrier service and terminate its lease operations over approximately 15 miles of rail line owned by NSR and located between milepost 11.00 in Voorheesville and a point 50 feet south of the centerline of the bridge at milepost 26.14 (or engineering station 6136+/-) in Delanson, N.Y., including the use of a wye track and any track leading to the Northeast Industrial Park at mileposts 12.1 and 12.29, in Albany County, N.Y. (Delanson-Voorheesville Line).¹⁶ According to NSR, SMS' request for discontinuance authority is related to the trackage rights NSR is seeking in Docket No. FD 36472 (Sub-Nos. 1-4). (SMS Notice 3 n.5, AB 1312X.) Specifically, NSR asserts that the discontinuance, along with the trackage rights it would receive, are necessary to improve NSR's ability to move intermodal traffic and automotive vehicles into the greater Boston marketplace. (*Id.*) In particular, NSR trains that utilize the proposed CSXT/P&W/Boston & Maine/PAS trackage rights over the lines from Voorheesville to Ayer—i.e., the Southern Route—would enter the line from the Delanson-Voorheesville Line. (*See* Letter from CSX to Danielle Gosselin, Acting Director, OEA, at 5 (Apr. 7, 2021) (Envtl. Comment EI-30550) (herein referred to as CSX Env'tl. Comment).)¹⁷

The notice includes the required certification from SMS that the line satisfies the criteria for discontinuance under the exemption provisions at 49 C.F.R. § 1152.50(b); specifically, that no local traffic has moved over the line during the last two years, that any common carrier overhead traffic on the line can be rerouted, and that no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the two-year period. (SMS Notice 7-8, AB 1312X.)¹⁸

According to the notice, SMS would consummate discontinuance authority upon approval of the Merger Transaction. (SMS Notice 2 nn.1, 4, AB 1312X.) SMS does not anticipate that any employees would be adversely affected by the proposed discontinuance. However, it acknowledges that the discontinuance would be subject to the labor protective

¹⁶ NSR, on behalf of SMS, filed the verified notice of exemption on February 25, 2021. Pursuant to 49 C.F.R. § 1152.50(d), the railroad seeking the exemption must notify certain parties at least 10 days prior to filing with the Board. NSR states that it provided notice to these parties on the same day that it filed its notice with the Board and, therefore, it would not object to the Board treating the verified notice as filed on March 8, 2021. (SMS Notice 1 n.2, AB 1312X.) Accordingly, the Board will consider March 8, 2021, as the filing date of the verified notice.

¹⁷ The CSX Environmental Comment is attached as Exhibit 4-A to the Revised Application.

¹⁸ On July 1, 2021, NSR filed a letter in response to a Board request for clarification regarding a statement in the notice of exemption stating that "SMS will continue to utilize overhead operating rights over the Line for the sole purpose of interchanging with NSR." *See Decision No. 3*, FD 36472 et al., slip op. at 14 (quoting SMS Notice 3 n.4, AB 1312X). In the letter, NSR explains that SMS currently serves the Northeast Industrial Plant, which connects to the Delanson-Voorheesville Line. (SMS Letter 1-2, AB 1312X.) NSR explains that, even after SMS's authority to operate over the Delanson-Voorheesville Line is discontinued, SMS would continue to move traffic to and from the Northeast Industrial Plant over this line, but solely for interchange purposes. (*Id.* at 2.) NSR asserts that no Board authority is needed to operate over another carrier's track for interchange purposes only. (*Id.*)

conditions set forth in Oregon Short Line Railroad—Abandonment—Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). (Id. at 5.)

Financial Arrangements. According to Applicants, no new securities would be issued in connection with the Merger Transaction. Applicants state that the purchase price for Systems would be paid by CSXC through a combination of cash and CSXC stock as detailed in their merger agreement. (Revised Appl. 22.)

Passenger Service Impacts. There are several passenger and commuter service carriers that operate over rail lines that are subject to the Merger and Related Transactions. The Revised Application includes a verified statement from Andy Daly, Senior Director of Passenger Operations for CSXT. According to Mr. Daly, the following Amtrak passenger services are provided over rail lines subject to the Merger and Related Transactions:

- *Vermont*: Amtrak operates the *Vermont* service between Washington, D.C. and St. Albans, Vt. Part of the service includes operations over the Knowledge Corridor (between New Haven and White River Junction), over which PAS has operating rights. The segment from New Haven to Springfield, Mass., is owned, maintained, and dispatched by Amtrak, while the segment between Springfield and East Northfield, Mass., is owned by MassDOT and dispatched and maintained by PAS/Springfield Terminal. (Revised Appl., Ex. 13-C, V.S. Daly 4.)
- *Valley Flyer*: Amtrak operates a second service over the Knowledge Corridor known as the *Valley Flyer* service, which runs between New Haven and Greenfield, Mass. (Id., Ex. 13-C, V.S. Daly at 5.)
- *Springfield to New Haven*: Amtrak operates service between Springfield and New Haven, also over the Knowledge Corridor. (Id.)¹⁹
- *Downeaster*: Amtrak operates the *Downeaster* service between Boston North Station and Brunswick, Me. (Revised Appl., Ex. 13-C, V.S. Daly 5.) MBTA owns and maintains the line between Boston and the Massachusetts/New Hampshire state line, while PAR subsidiaries²⁰ own and maintain the line between the Massachusetts/New Hampshire state line and Brunswick. The State of Maine owns approximately one mile of the line leading into Brunswick Station in Brunswick. According to Applicants, MBTA dispatches the segment from Boston to signal CPF-LJ (Lowell Junction, Mass.), while the PAR System/Springfield Terminal dispatches from signal CPF-LJ to Brunswick. (Id., Ex. 13-C, V.S. Daly 6.)

¹⁹ This service is also known as the Amtrak Hartford Line. See Amtrak, Amtrak Hartford Line, <https://www.amtrak.com/amtrak-hartford-line-train> (last visited July 25, 2021).

²⁰ According to the map provided by Applicants, the PAR subsidiaries are Boston & Maine and Maine Central. (See Revised Appl., Ex. 1, Maps.)

- *Adirondack and Ethan Allen*: Amtrak operates the Adirondack service between New York City and Montreal, Quebec, and operates the Ethan Allen Express service between New York City and Rutland, Vt., though both services are currently suspended because of COVID-19. Applicants state that, when in operation, these Amtrak services operate on 4.6 miles of rail line owned by CP between Schenectady, N.Y., and Glenville, N.Y., the same segment of track over which PAS has trackage rights to reach CP's Mohawk Yard. (*Id.*, Ex. 13-C, V.S. Daly at 6.)
- *Lake Shore Limited*: Amtrak operates the Lake Shore Limited service between Boston and Chicago, Ill.²¹ Part of this service, from near to Albany, N.Y., to Worcester, runs over a CSXT-owned line. (Revised Appl., Ex. 13-C, V.S. Daly at 6.)

According to Mr. Daly, the following commuter services are provided over rail lines subject to the Merger and Related Transactions:

- *Springfield to New Haven*: The Connecticut Department of Transportation (CDOT), in conjunction with CTrail and Amtrak, operates a commuter service between Springfield and New Haven, over the Knowledge Corridor. (*Id.*, Ex. 13-C, V.S. Daly 5.)²²
- *Waterbury, Conn., to Bridgeport, Conn.*: The Metropolitan Transportation Authority, through its operating agency Metro-North Railroad, operates commuter service between Waterbury, Conn., and Bridgeport, Conn. (Revised Appl., Ex. 13-C, V.S. Daly 5.) The line between Waterbury and Bridgeport is owned by CDOT and maintained and dispatched by Metro-North Railroad. According to Applicants, PAS has freight easement rights over the segment of rail line from Waterbury to Derby, Conn. (*Id.*) According to Applicant's map, the remaining portion of the route, from Derby to Bridgeport, is owned by P&W. (Revised Appl., Ex. 1, Maps.)
- *Fitchburg Line*: MBTA operates the Fitchburg Line commuter service between Wachusett, Mass., and Boston North Station. (Revised Appl., Ex. 13-C, V.S. Daly 6.) PAS owns the tracks between Wachusett and Fitchburg, while MBTA owns the tracks from Fitchburg to Boston North Station, but both PAS and PAR subsidiaries hold perpetual freight easements over the MBTA-owned track. (*Id.*) Applicants state that Springfield Terminal dispatches MBTA's trains from Wachusett to signal CPF-WL, near Willows, while MBTA dispatches the line between signal CPF-WL and Boston North Station. (*Id.*, Ex. 13-C, V.S. Daly 7.)
- *Haverhill Line*: MBTA operates the Haverhill Line commuter service between Haverhill, Mass., and Boston North Station, on a line segment owned and maintained by MBTA but over which a PAR subsidiary holds a perpetual freight easement. (*Id.*) Springfield Terminal

²¹ Some of the Lake Shore Limited trains run from Chicago to New York City, rather than Boston. See Amtrak, Lake Shore Limited, <https://www.amtrak.com/lake-shore-limited-train> (last visited July 25, 2021).

²² This commuter service is separate from the New Haven-Springfield passenger service that is offered by Amtrak.

dispatches trains between Lowell Junction and MBTA's Haverhill station, while MBTA dispatches between Lowell Junction and Boston North Station. (Id.)

- *Lowell Line*: MBTA operates the Lowell Line commuter service between Lowell, Mass., and Boston North Station, on a line segment owned and maintained by MBTA but over which a PAR subsidiary holds a perpetual freight easement. (Id.) Springfield Terminal dispatches the line between MBTA's Lowell Station and signal CPF-BY in Lowell, while MBTA dispatches between signal CPF-BY and Boston North Station. (Id.)

Mr. Daly asserts that the Merger and Related Transactions would have no negative impact on passenger service operated on the rail lines affected by these proceedings. (Id., Ex. 13-C, V.S. Daly 4.) He further states that passenger service would benefit from the more consistent and reliable network that would result from the Merger and Related Transactions. (Id.) In particular, he notes that passenger service would benefit from, among other things, greater deployment of technology and digitization of railroad operation and CSXT's experience with installing and operating Positive Train Control. (Id., Ex. 13-C, V.S. Daly 8-9.) According to Mr. Daly, CSXT plans to install Positive Train Control on the PAR line between the Massachusetts/New Hampshire state line in Brunswick, which hosts the Downeaster service. (Id., Ex. 13-C, V.S. Daly 15.)

CSXT and B&E further state that they commit to fully stepping into the shoes of Springfield Terminal regarding any agreements or commitments made by Springfield Terminal to MassDOT and MBTA, including with respect to Springfield Terminal's dispatching responsibilities and that dispatching operations of MBTA and MassDOT passenger trains would continue to be located in North Billerica, Mass., for the foreseeable future. (Revised Appl., Ex. 13, Operating Plan 47.) Mr. Daly also states that CSXT commits to continuing to route traffic from the existing CSXT network onto the existing PAR/Springfield Terminal network through Barbers Station and Ayer, rather than using the Grand Junction Branch, which runs from Worcester to Framingham, Mass. (Revised Appl., Ex. 13-C, V.S. Daly 10.) He further states that if CSXT sees the need in the future to consistently operate over the Grand Junction Branch, it is committed to working cooperatively with MBTA to implement capital improvements to accommodate any changes in CSXT freight service. (Id.)

Mr. Daly also asserts that the rerouting of NSR intermodal and automobile trains from the Northern Route to the Southern Route would not impact passenger service, including the Lake Shore Limited service. (Id., Ex. 13-C, V.S. Daly 12-14.)

Discontinuances/Abandonments. CSXT states that it does not anticipate discontinuing service over or abandoning any rail lines because of the Merger Transaction. (Prefiling Notice 39; see also Revised Appl., Ex. 13, Operating Plan 54.) However, as noted above, in a Related Transaction, NSR has filed on behalf of SMS a verified notice of exemption to discontinue service and terminate SMS's lease operations over the Delanson-Voorheesville Line (approximately 15 miles of rail line owned by NSR located between milepost 11.00 in Voorheesville, and a point 50 feet south of the centerline of the bridge at milepost 26.14 (or engineering station 6136+/-) in Delanson, including the use of wye track and any track leading to the Northeast Industrial Park at milepost 12.1 and 12.29, in Albany County, N.Y.). NSR states

that SMS would not consummate discontinuance authority until the Merger Transaction is completed. (SMS Notice 2 n.1.)²³

Public Interest Considerations. Applicants assert that the PAR System is an under-resourced regional railroad and the proposed integration of the PAR System into the CSXT rail network would bring substantial benefits to shippers and local communities. (Revised Appl. 2.) They further state that CSXT has worked to ensure that the Merger Transaction would serve the public interest and not cause any competitive harm, specifically through the NSR Settlement Agreement and Term Sheet Agreement. (*Id.* at 2-3.) Applicants request that the Board impose the commitments in these agreements as conditions to approval of the Merger Transaction. (*Id.* at 12.) Applicants further state that the Merger Transaction would be a straight end-to-end combination of two railroad networks, the type of transaction that the Board has acknowledged is likely to improve rail operations and unlikely to have any adverse competitive effect. (*Id.* at 3.) They also discuss the benefits that the Merger and Related Transactions would bring and state that public support for the transactions is evidenced by the 81 support letters that have been submitted to the Board. (*Id.* at 4.) For these reasons, Applicants assert that the Merger Transaction meets the requirements for approval under 49 U.S.C. § 11324(d). (*Id.* at 14, 18.)

Following is a summary of the significant aspects of the proposed Merger and Related Transactions, as explained by Applicants.

Improved Service. Applicants state that the Merger Transaction would substantially improve rail service in New England and expand market opportunities for shippers. (Revised Appl. 16.) According to CSXT, a key benefit to the Merger Transaction would be the ability to consolidate the PAR System and CSXT's system into single-line service, creating more efficient and reliable service for each carrier's customers. (Revised Appl., Ex. 13, Operating Plan 43.) Specifically, CSXT states that single-line service would reduce switching and interchange, eliminate the need to coordinate a hand-off between separate rail carriers, result in a savings in transit times, and reduce the chance of unexpected problems in the physical interchange of traffic between two independent carriers. (*Id.*)

²³ On June 24, 2021, Maine Central and Springfield Terminal filed for abandonment and discontinuance authority, respectively, in Maine Central Railroad Co.—in Kennebec & Somerset Counties, Me., Docket No. AB 83 (Sub-No.17X) and Springfield Terminal Railway—Discontinuance of Service Exemption—in Kennebec & Somerset Counties, Me., Docket No. AB 355 (Sub-No. 44X), for an out-of-service rail line known as the Madison Branch, that runs from Oakland, Me. (milepost 0.4) to North Anson, Me. (milepost 25.7). Applicants do not seek to include this potential abandonment as a Related Transaction. The Board finds that this abandonment is unrelated to the other transactions at issue in these dockets and therefore need not be embraced as a Related Transaction. See Norfolk S. Ry.—Acquis. & Operation—Certain Rail Lines of the Del. & Hudson Ry., FD 35873, slip op. at 15 (STB served May 15, 2015) (holding that authority for two discontinuance of trackage rights proceedings existed independently from the acquisition transaction and therefore need not be embraced).

CSXT states that it would also make significant and much-needed capital investments in the PAR System. (Revised Appl., Ex. 13, Operating Plan 3; see also id. at 48-54 (listing CSXT’s specific planned capital investments).)

CSXT claims that the basic routes and traffic flow would not change significantly as a result of the transaction, but that improvements would also be achieved through implementation of CSXT’s operating philosophy, which places greater emphasis on operating reliably and consistently. (Revised Appl., Ex. 22-C, V.S. Pelkey 6.) It states that shippers would also be able to better manage their own logistics costs, particularly by using CSXT’s web-based tool, ShipCSX, that allows customers to monitor their shipments. (Id., Ex. 22-C, V.S. Pelkey 7.) It further states that by having more reliable rail service, CSXT would be able to attract more business from trucks, thereby reducing congestion on the region’s highways. (Id.)

Commitments Toward Preserving CSX-PAR Competition. Applicants state that CSXT has made a number of commitments as part of the Merger and Related Transactions that would preserve competition. First, Applicants state that there are only three shippers, located just north of Boston, whose rail alternatives would go from two to one. (Revised Appl., Ex. 22-C, V.S. Pelkey 16-17.)²⁴ CSXT states that it commits to providing switching service that would allow these 2-to-1 shippers to reach PAS, thus preserving their current access to multiple rail carriers. (Id., Ex. 22-C, V.S. Pelkey 17.) CSXT states that it also commits to keeping all existing active gateways affected by the Merger Transaction open on commercially reasonable terms, and waiving any right it 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 (i.e., agreeing to establish what is commonly referred to in the railroad industry as Rule 11 rates). (Id.)

Rerouted Traffic. As discussed above, the NSR Settlement Agreement establishes the trackage rights for NSR to move a pair of intermodal and automotive trains over the CSXT/P&W/Boston & Maine/PAS lines—i.e., the Southern Route—so that NSR trains between eastern New York and Ayer can be double-stacked. (Revised Appl. 9-10, 24-25.) These trackage rights over the Southern Route would allow NSR to move double-stack intermodal trains into Ayer, which NSR cannot do today on the Northern Route. (Id., Ex. 13, Operating Plan 41.) While this would take some traffic off of the Northern Route, CSXT has indicated that certain traffic from Ayer customers would utilize the Northern Route rather than the Southern Route for a transitional period. (Id., Ex. 22-E, V.S. Reishus 105; CSX Env’tl. Comment 2-3.) The impact of this rerouted traffic on volumes for the Northern and Southern Routes is discussed in more detail below, under the heading “Environmental Matters.”

Ayer Switching District. The Ayer Switching District is the area where CSXT, PAR Systems, and PAS converge, as well as the eastern terminus of the Northern and Southern Routes. CSXT states that the Ayer Switching District contains an intermodal facility that can handle 75,000 truckload equivalent units (TEUs) annually, with the potential to expand to

²⁴ In his verified statement, Dr. Reishus discusses the methodology he used to identify 2-to-1 shippers (i.e., those shippers that currently have access to both CSXT and PAR Systems.) (See Revised Appl., Ex. 22-E, V.S. Reishus 50-52.)

175,000 TEUs of capacity, and also includes a terminal for automobile shipments. (Revised Appl., Ex. 13, Operating Plan 31.)

Applicants assert that the Merger and Related Transactions would result in significant improvements to the Ayer Switching District. First, under the NSR Settlement Agreement, CSXT and NSR have agreed to modify the existing trackage rights cap on PAS's Island Line, a short segment of rail line between Harvard and signal CPF 312, just east of Ayer. (Revised Appl., Ex. 22-C, V.S. Pelkey 13.) CSXT explains that when PAS was created, PAS granted Springfield Terminal overhead trackage rights over the Island Line, allowing Springfield Terminal to connect the northern lines of the PAR System to CSXT, but the trackage rights had a volume cap that is consistently exceeded. (Revised Appl., Ex. 12, Market Analysis 25.) CSXT states that it has reached an agreement with NSR to modify that volume cap and replace it with a process that would allow current traffic volume to move over the overhead trackage rights and to enable the development of capacity to handle any increase in that traffic. (*Id.*)

Second, CSXT states that the NSR Settlement Agreement also sets forth certain principles to strengthen Ayer operations and that CSXT has agreed to fund the construction of certain improvements in facilities in Ayer to ensure efficient operations. (*Id.*, Ex. 22-C, V.S. Pelkey 13-14.) As part of the plan to strengthen Ayer operations, the parties have agreed that, once CSXT owns a one-half interest in PAS and B&E is the contract operator of PAS, they intend to implement levels of service metrics and goals and a "static yard plan" for traffic moving on the Island Line, which includes the Ayer yard. (*Id.*, Ex. 13, Operating Plan 39.)

Third, CSXT explains that the NSR Settlement Agreement provides new switching rights for CSXT to serve customers in Ayer that were not previously available to CSXT shippers. (*Id.*, Ex. 22-E, V.S. Reishus 112.) Specifically, it states that the PAR System currently lacks the right to switch traffic that is to or from the south of Ayer (i.e., off CSXT at Barber Station), but CSXT would have new competitive access for some shippers at Ayer to the integrated CSXT. (*Id.*)

B&E Acquisition. As noted, Applicants propose to replace Springfield Terminal with B&E as the contract operator of PAS. Applicants state that the two agreements—the NSR Settlement Agreement and the Term Sheet Agreement—would ensure that CSXT's half ownership of PAS would not have any adverse impact on competition for transportation within, into, and out of New England, and that PAS would in fact be strengthened as an independent carrier for the region. (Revised Appl. 3.) Specifically, CSXT states that under the GWI Term Sheet Agreement, B&E would be required to act exclusively in the interest of PAS as an independent rail carrier and provide non-discriminatory service to all carriers connecting with PAS. (Revised Appl., Ex. 22-C, V.S. Pelkey 14.) CSXT asserts that it would not have any control over the rates set by PAS, as rate-setting would be exclusively the responsibility of B&E. (*Id.*, Ex. 22-C, V.S. Pelkey 12.) To that end, CSXT notes that there are some shippers in Springfield and Holyoke, Mass., that currently have access to both CSXT and PAS. CSXT claims that because it would retain no pricing or operational control with respect to PAS, these shippers would continue to have two independent rail options. (Revised Appl., Ex. 22-E, V.S. Reishus 85.) CSXT states that it also has agreed to "transitional restrictions" on the rates it could charge for future movements originating or terminating on the existing PAR System lines to and from PAS. (*Id.*, Ex. 22-C, V.S. Pelkey 12.)

To further ensure that PAS remains competitively neutral, CSXT states that it has also agreed to sell its 50% interest in PAS under specified terms if NSR wishes to acquire it within seven years, and that NSR would have a right of first refusal if any other offers are made to acquire CSXT's interest. (*Id.*) CSXT claims that there would be other benefits from being a half-owner of PAS, including the fact that B&E's focus would be exclusively on PAS and not divided between PAS and any other rail operations (as was the case with Springfield Terminal) and that CSXT and NSR would be able to ensure that PAS has adequate funding for maintenance and capital work. (Revised Appl., Ex. 22-F, V.S. Huneke 12-13.)

Potential PAS-NECR Conflicts. CSXT acknowledges that there could be concerns about the impact on competition resulting from B&E's serving as the operator for PAS on the line from White River Junction to East Northfield (often referred to as the Connecticut River Line, which comprises the northern end of the Knowledge Corridor). The line is owned by NECR, a GWI subsidiary, but PAS has trackage rights over the line. As a result of the Merger and Related Transactions, the two carriers operating over the line—NECR and B&E (on behalf of PAS)—would both be GWI subsidiaries. Applicants argue, however, that this common ownership would not have an adverse impact on competition because, as the contract operator of PAS, B&E would be obligated and incentivized to operate PAS in the interest of PAS and not in the interest of any affiliated rail carrier. (Revised Appl. 12-13.)²⁵

In addition, Applicants claim that CSXT and NSR have made commitments regarding PAS that would ensure that no shipper or connecting rail carrier on that rail segment would lose the benefits of multi-carrier competition. (Revised Appl. 13.) According to CSXT, there are only two shippers currently served by both PAS and NECR on the line, and CSXT and NSR have committed that PAS would establish rates for these customers at current levels, subject to future reasonable escalation, for as long as B&E is operator of PAS. (Revised Appl., Ex. 22-C, V.S. Pelkey 18.) The other commitments involve service with a connecting short line carrier, the Vermont Railway, Inc. (VTR).²⁶ VTR can currently interchange with both PAS and NECR at

²⁵ CSXT identifies the line from Springfield to New Haven (which comprises the southern portion of the Knowledge Corridor) as another line where such a concern could be perceived. That line is owned by Amtrak, but three freight railroad carriers have rights to operate over it: CSO (a GWI affiliate); CSXT; and PAS. (Revised Appl., Ex. 22-E, V.S. Reishus 88.) CSXT operates on the line via a haulage arrangement with CSO. (*Id.*) Although CSO and PAS would both be operated as GWI affiliates after the Merger Transaction, CSXT states that PAS does not have rights to serve customers along the line that are served by CSO and, therefore, customers on this line would continue to have the same two-carrier competitive service (CSXT and CSO) that they have today. (Revised Appl., Ex. 12, Market Analysis 21-22.)

²⁶ VTR is a subsidiary of Vermont Rail System (VRS). VRS is a business name used by six short line railroads controlled by Trans Rail Holding Company, including VTR, that operate in the northeast. There are, in fact, three VRS carriers that connect with PAS: VTR, Washington County Railroad Company, and Green Mountain Railroad Corporation. (*See* VRS Reply to Prefiling Notice 3, Mar. 16, 2021.) In some parts of the Revised Application, CSXT states that it refers to the affiliated VRS railroads collectively as VTR. (Revised Appl., Ex. 12,

Bellows Falls, Vt., and White River Junction. (Revised Appl., Ex. 12, Market Analysis 19.)²⁷ VTR also connects with PAS on the Patriot Corridor at Hoosick Junction, N.Y.²⁸ CSXT states that, to ensure that B&E's operation of PAS would not have an adverse impact on VTR's choice of interchange partners, CSXT and NSR have agreed to the following commitments on behalf of PAS:

- For movements to and from the east with connections to PAR, PAS would establish rates on existing lanes via Deerfield²⁹ and Ayer at current levels, subject to future reasonable escalation, for as long as B&E is operator of PAS;
- For movements to and from the west with connections to CSXT at Rotterdam Junction, PAS would establish rates for movements between Hoosick Junction (where VTR interchanges with PAS today) and Rotterdam Junction (where PAS connects with CSXT) on existing lanes at current levels, subject to future reasonable escalation, for as long as B&E is operator of PAS;
- For VTR traffic that moves to and from storage facilities at East Deerfield (a location on PAS), PAS would provide haulage between the storage facilities at East Deerfield and Bellows Falls at rates that are the average of current commodity-specific interline rates for those movements, for as long as B&E is operator of PAS; and
- For VTR traffic, B&E would provide VTR with 5-day per week service in the above lanes as long as volumes support this level of service.

(Revised Appl., Ex. 22-C, V.S. Pelkey 18-19.) CSXT states that it has also agreed with NSR that B&E would not be permitted to share with any other GWI-controlled rail carriers any information regarding rate divisions from connecting railroads that B&E becomes aware of as a result of operating PAS. (*Id.*) In other words, B&E would not be able to share information with NECR, even though they are both GWI affiliates.³⁰

Market Analysis 5 n.2; Rev. Appl., Ex. 22-E, V.S. Reishus 94.) The Board presumes that other references to VTR throughout the Revised Application similarly refer to all three of the connecting VRS rail carriers.

²⁷ CSXT states that NECR currently provides VTR with haulage to connect its lines between Bellows Falls and White River Junction, and those haulage rights will be unaffected by B&E's operation of PAS. (Revised Appl., Ex. 22-C, V.S. Pelkey 18.)

²⁸ CSXT states that NSR can also interchange traffic with VTR at Hoosick Junction pursuant to NSR's haulage rights over the Patriot Corridor. (Revised Appl., Ex. 22-E, V.S. Reishus 99.)

²⁹ CSXT lists the location as Deerfield, which the Board presumes is East Deerfield.

³⁰ The Board noted in Decision No. 3 that Applicants had not provided the specific terms of its service or information-sharing commitment and that "the Board cannot assess whether these commitments would sufficiently preserve competition as the Applicants claim." Decision

Maine Department of Transportation Settlement Agreement. CSXT states that it has entered into a settlement agreement with the Maine Department of Transportation (Maine DOT), in which they have agreed to work cooperatively to complete certain federal infrastructure grants to upgrade PAR System line segments in Maine, and to work together on future projects to increase capacity, enhance safety, and promote efficient railroad operations. (Revised Appl., Ex. 22-C, V.S. Pelkey 15.)³¹ CSXT requests that the Board impose the commitments in this settlement agreement as conditions to approval of the Merger Transaction. (Id.)

Schedule for Consummation. Applicants state that they seek to consummate the Merger Transaction once the Board’s decision granting approval becomes effective. (Revised Appl. 22.) The Applicants anticipate consummating the Merger Transaction and the Related Transactions at the same time, subject to Board approval of each transaction. (Id. at 9.)

Environmental Impacts. Applicants contend that the transaction would not result in any operational changes (such as increases in rail traffic, train operations, or yard activity) that would exceed the Board’s thresholds for environmental review in 49 C.F.R. § 1105.7(e)(4) and (5). (Revised Appl., Ex. 4, Env’tl. Matters 1.) Applicants therefore assert that the Merger Transaction does not require the preparation of environmental documentation under 49 C.F.R. § 1105.6(b)(4). (Id.) On April 7, 2021, CSX submitted a letter to OEA with segment-specific traffic information through 2022 for the rail lines that are covered by the Merger and Related Transactions in support of its assertion that none of the thresholds for environmental review would be exceeded. (CSX Env’tl. Comment.) CSX provided additional projected traffic information through 2024 in its Revised Application. (See Revised Appl., Ex. 22-D V.S. Wallace; see also Revised Appl., Ex. 14, Density Charts.) Applicants plan to prepare a SIP under the Board’s rules at 49 C.F.R. § 1106 and 49 C.F.R. § 1180.1(f)(3) setting out how they would ensure that safe operations are maintained throughout the acquisition-implementation process, if the Merger Transaction is approved.

In Decision No. 3, the Board noted that CSXT, NSR, and GWI have agreed to modify the “Ayer Operations Protocols, Engineering Planning, and Capacity Roadmap” by, among other things, raising the volume cap for certain trackage rights traffic. Decision No. 3, FD 36472 et al., slip op. at 16 n.28. Accordingly, the Board directed Applicants to provide further explanation and data concerning this possible change in yard traffic, including the total amount of yard activity in the Ayer Switching District. Id. In the Revised Application, CSXT states that it “does not expect the terms of the NSR Settlement Agreement, including raising the volume cap

No. 3, FD 36472 et al., slip op. at 12. Applicants do not provide any more details on how these commitments would work in practice, other than noting that the service commitment would be for 5-day a week service. Although the specific terms of these commitments are important, the Board also understands that the specifics may not have yet been agreed to by the parties. The Board notes that it may consider the need to review the specific provisions as the record further develops.

³¹ Senator Susan Collins of Maine also submitted a letter on May 21, 2021, noting her support for the Merger Transaction, subject to the execution of a settlement agreement between Maine DOT and CSXT.

for certain trackage rights traffic, to result in any change in the shipment weight of Ayer Yard traffic.” (Revised Appl., Ex. 13, Operating Plan 45.) It claims that while the routing of some traffic into and out of Ayer may change—due to the rerouting of NSR’s intermodal and automobile trains—this would not result in any change in the shipment weight of traffic in the Ayer Switching District. (*Id.*) Accordingly, CSXT maintains that the anticipated changes in yard traffic that would result from the Merger Transaction do not trigger the thresholds for environmental review in the Board’s regulations. (*Id.* at 46)

The existing PAR system between Worcester and Ayer runs for short segments along or over the Wachusett Reservoir. Concerns about the need to improve the rail infrastructure immediately adjacent to or over the Wachusett Reservoir to protect the Wachusett Watershed and Reservoir were raised by several commenters in response to the Prefiling Notice, including the Massachusetts Water Resources Authority (MWRA), a public authority that provides wholesale water and sewer services to over three million people in the Boston area. (MWRA Letter 1, Mar. 17, 2021.) MassDOT and MBTA (collectively MassDOT/MBTA) state that an increase in traffic from NSR’s rerouted intermodal trains under the Merger Transaction “would increase proportionately the risk of a derailment or other accident that could release toxic or other harmful substances into the reservoir.” (MassDOT/MBTA Letter 3, Mar. 16, 2021; see also MWRA Letter 2, Mar. 17, 2021.)³² Several Members of the Massachusetts Congressional delegation also raise concerns about the need to protect the Wachusett Reservoir.³³

In response, CSX states that the only additional traffic over the line that traverses the reservoir would be the pair of NSR intermodal and automotive trains. (CSX Envtl. Comment 4.) CSX further notes that such trains are less prone to rail accidents than carload trains and that the number of carload trains on the line that traverses the reservoir would actually be reduced as a result of the Merger Transaction. (*Id.*) CSX states that it is actively engaged in discussions with representatives from local communities to explore ways to strengthen the rail infrastructure in the area and has identified concrete steps to take to effect such upgrades (at CSXT’s expense). As an initial step, CSXT states that it plans to upgrade approximately 7.6 miles of track adjacent to the Wachusett Reservoir to FRA Class 3 track standards. (Revised Appl., Ex. 4, Envtl. Matters 6.) It further notes that, unlike the PAR Railroads, CSXT has the financial ability to reasonably address these stakeholder concerns, and that CSXT is confident that issues regarding the Wachusett Reservoir can be resolved. (*Id.*)

³² MWRA asks that, because of its concerns regarding the Wachusett Reservoir, the Board consider the Merger Transaction as a “significant” transaction instead of a “minor” transaction, which has shorter timeframes. Letters echoing this request were also filed by the MWRA Advisory Board and the Water Supply Citizens Advisory Committee to the MWRA. As noted, the Board determined the Merger Transaction to be “significant” in Decision No. 2.

³³ (See Letter from U.S. Senators Elizabeth Warren and Edward Markey and U.S. Representatives Richard E. Neal, James P. McGovern, Stephen F. Lynch, William R. Keating, Katherine M. Clark, Seth Moulton, Lori Trahan, Ayanna Pressley, and Jake Auchincloss to STB (Mar. 22, 2021); see also Letter from U.S. Representative Richard E. Neal to STB (July 12, 2021).)

CSXT also claims that there will be no adverse impacts on passenger rail and no construction of new rail lines.³⁴ CSXT expects positive effects on energy efficiency due to better infrastructure and operational efficiency. (Revised Appl., Ex. 4, Envtl. Matters 8.)

Historic Impacts. Applicants contend that a historic review is not required for this transaction because there would be no significant change in operations and no property 50 years old or older would be affected. (Prefiling Notice 9.)

Labor Impacts. CSXT states that it does not expect to establish or abolish craft positions on CSXT as a result of the Merger Transaction. (Revised Appl., App. 1.) Applicants state that they also do not expect the acquisition of the PAR System to impact Springfield Terminal employees involved in the operation of the PAR System lines. (Revised Appl. 26 & Ex. 22-C, V.S. Pelkey 21.) Regardless, Applicants state that the standard labor protective conditions imposed in New York Dock should apply to those employees. (Id.)³⁵

According to B&E (which currently has no employees), although it intends to offer employment to Springfield Terminal employees working on the PAS lines with a goal of filling 159 positions, it plans to utilize fewer employees than Springfield Terminal to operate PAS. (B&E Amended Pet. 15, FD 36472 (Sub-No. 5).)³⁶ B&E states that adversely affected employees would be eligible for New York Dock labor protective conditions. (Id. at 15-16.) In addition, it states that it intends to recognize unions currently representing Springfield Terminal's employees that would be hired by B&E, and to enter into agreements providing substantially similar terms and conditions to those contained in existing agreements. (Id. at 15.)

As noted above, NSR states that it agrees that the labor protective conditions established in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980), should be imposed in its trackage rights proceedings, and SMS acknowledges that the discontinuance would be subject to the labor protective conditions set forth in Oregon Short Line Railroad, 360 I.C.C. 91 (1979).

³⁴ NSR includes a copy of the trackage rights agreement to acquire trackage rights over the CSXT line from Voorheesville to Worcester with its notice of exemption. The agreement references “construction” of a connecting track. CSX claims that no construction authority is required in this instance because the “construction” referred to entails the rehabilitation of existing track. (CSX Envtl. Comment 5.) On July 20, 2021, the Village of Voorheesville (Village) filed a letter raising concerns about the plans for this connection. (Village Letter 1-2, July 20, 2021.) The Board will address the Village's letter in a subsequent decision.

³⁵ Applicants state that application of the New York Dock conditions would also satisfy rail labor's request, made during Pan Am Southern's formation in Norfolk Southern Railway—Joint Control & Operation/Pooling Agreement—Pan Am Southern LLC, Docket No. FD 35147, that the Board impose New York Dock conditions on any future change in PAS operator. (Revised Appl. 27.)

³⁶ According to the Revised Application, this would be a reduction from the current 214 Springfield Terminal employees that serve the PAS lines. (Revised Appl., App. 1.)

PRIMARY APPLICATION AND RELATED FILINGS ACCEPTED. The Board finds Applicants have provided sufficient information to satisfy the requirements for a “significant” transaction application. In particular, Applicants have addressed or clarified all of the issues that the Board found insufficient in the Applicants’ original Market Analysis, and by association, original Operating Plan. The revised Market Analysis describes in sufficient detail “the impacts of the proposed transaction—both adverse and beneficial—on inter-and intramodal competition,” “identif[ies] and address[es] relevant markets and issues,” and “reflects the consolidated company’s marketing plan and existing and potential competitive alternatives (inter- as well as intramodal).” 49 C.F.R. § 1180.7(a). Applicants also provide supporting data, as required by the regulations. 49 C.F.R. § 1180.7(c). All of the other requirements for a “significant” transaction application have also been addressed.³⁷ Accordingly, the Board accepts the Revised Application for consideration. See 49 U.S.C. §§ 11321-26; 49 C.F.R. § 1180. The Board also accepts the filings for the Related Transactions. The Board reserves the right to require the filing of additional supplemental information, if necessary for a full record.

B&E Transaction. Several parties argue that the proceeding in Docket No. FD 36472 (Sub-No. 5), in which B&E seeks authority to serve as PAS’s operator (B&E Transaction), should be included as part of the Revised Application.³⁸ MassDOT/MBTA argue that the Merger Transaction and B&E Transaction are interdependent and that the Applicants “have attempted to compartmentalize those transactions in order to shield the B&E-PAS Transaction from Board scrutiny and, in turn, Board-imposed protective conditions.” (MassDOT/MBTA Reply to Prefiling Notice 5; see also MassDOT/MBTA Reply to Surreply 3-4; Republic Services, Inc., ECDC Environmental, L.C., and Devens Recycling Center, LLC Reply to Prefiling Notice 6.) VRS argues that the Revised Application is incomplete because of the “highly questionable” attempt to segregate the B&E Transaction from the “more searching” application process. (VRS Reply to Prefiling Notice 5.) Applicants respond that they have properly complied with the Board’s rules and that the B&E transaction was appropriately filed as a “directly related” request. (Applicants Surreply 5.) B&E responds that its separate filing does not mean that the terms of its proposed agreement to operate the PAS lines would not be subject to review as part of the Revised Application. (B&E Surreply 4-5.)

The Board finds that B&E’s utilization of a separate petition for exemption is permissible. There are no specific regulations governing which parts of a multifaceted merger transaction should be included as part of the primary application or a related transaction, or if they may be submitted as an unrelated transaction.³⁹ However, in past merger/control

³⁷ In Decision No. 3, the Board also directed Applicants to address a few minor discrepancies in its “significant” transaction application. Decision No. 3, FD 36472 et al., slip op. at 13-14. Applicants have sufficiently amended or clarified those discrepancies.

³⁸ The parties raised their arguments in response to the Applicants’ Prefiling Notice. There is no indication that the parties intended to withdraw these arguments. Accordingly, the Board will treat these argument as having been made in response to the Revised Application.

³⁹ Applicants argue that a separate application and petition for exemption comply with the Board’s regulation at 49 C.F.R. § 1180.4(c)(2)(vi), which states that “Applicants shall file

proceedings, related transactions have generally been ones that are separate from the merger/control transaction but contingent upon approval and consummation of the merger/control transaction. Here, the B&E Transaction is such a transaction and thus properly included as a Related Transaction.

MassDOT/MBTA's argument that the parties are trying to shield the B&E transaction from potential conditions is also unfounded. The Board can still impose conditions relating to B&E operations of PAS lines as part of the Merger Transaction approval, even if the B&E Transaction is in a separate docket. Indeed, that is why such transactions are considered as *related* transactions—so that the Board can consider the transactions together (even if approval for some transactions are being sought under different approval standards). VRS's concern that the B&E transaction would not be subject to the “more searching” application process is also unconvincing. Parties seeking operating authority are free to seek approval using the exemption process of 49 U.S.C. § 10502. VRS and others will have an opportunity to present their arguments for why the exemption standard has not been met.

PROCEDURAL SCHEDULE. On April 1, 2021, Applicants filed a petition to establish a procedural schedule as directed by the Board in Decision No. 1. In Decision No. 2 (published in the Federal Register on April 26, 2021 (86 Fed. Reg. 22,091)), the Board issued a notice of the proposed procedural schedule and requested public comments. The Board proposed modifications to the Applicants' proposed schedule. CSX proposed a 127-day schedule, but the Board stated that because of the procedural features involved in considering a “significant” transaction, such a schedule would be too compressed. The Board instead proposed a 180-day schedule, the maximum period of time permitted under 49 U.S.C. § 11325(c), similar in duration to the schedule adopted for a “significant” transaction in Canadian Pacific Railway—Control—Dakota, Minnesota & Eastern Railroad, FD 35081 (STB served Dec. 27, 2007). No comments were received in opposition to the Board's proposed procedural schedule.

However, in the Revised Application, Applicants propose a modified procedural schedule. (Revised Appl. 18-19.) Under this modified procedural schedule, the period for developing the evidentiary record would be approximately 132 days, 48 days less than the Board's proposed 180-day schedule. Under Applicants' proposed schedule, the time for parties to file: (i) responses to comments, protests, requests for conditions, and other opposition due; (ii) responses to responsive, including inconsistent, applications; and (iii) rebuttals in support of

concurrently all directly related applications, e.g., those seeking authority to construct or abandon rail lines, obtain terminal operations, acquire trackage rights, etc.” (Applicants Surreply 5.) MassDOT/MBTA argue, however, that use of the term “Applicant” when referring to related applications means that B&E must be considered an applicant to the main docket (i.e., the Merger Transaction). (MassDOT/MBTA Reply to Surreply 3-4.) The Board disagrees. There is no statutory or regulatory requirement that applicants in a related transaction be affiliated with the primary applicants in the merger or control transaction. Indeed, such an interpretation would limit the ability of parties to the merger/control transaction to negotiate separate settlement agreements with affected third parties. A third party might be unwilling to agree, for example, to a merger applicant's offer of trackage rights to offset a competitive harm if it were required to be a party to the merger application.

the Revised Application and Related Transactions, would all be shortened by approximately 25 days. Applicants' proposed schedule would also shorten the due date for rebuttals in support of responsive applications by about 10 days and the period for filing final briefs by about 14 days. (*Id.* at 19) Applicants state that a shorter schedule is appropriate because they have invested significant time and resources in negotiating and finalizing settlement agreements to resolve potential issues related to the Merger and Related Transactions, and that interested parties have been on notice of this proceeding for several months. (*Id.* at 20.)

The Board will not modify the procedural schedule in a manner that would shorten non-Applicant parties' time periods to file. Accordingly, the Board rejects Applicants' proposal to shorten the time periods for parties to file rebuttals in support of responsive applications or final briefs. However, because the Applicants themselves are most likely to be affected by the shortening of the time period to file response to comments, responsive applications, and rebuttals in support of the Revised Application, the Board will accept that modification to the procedural schedule. This modification would result in a procedural schedule in which a decision approving the Merger and Related Transactions would become effective on May 3, 2022. That should give Applicants sufficient time to complete the transaction in accordance with their own schedule if approval is granted. The procedural schedule is shown in the Appendix. The Board notes that the procedural schedule is subject to change based on case developments.

NOTICES OF INTENT TO PARTICIPATE. Any person who wishes to participate in this proceeding as a Party of Record must file with the Board, no later than August 20, 2021, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, Mr. LaRocca (representing CSX and 747 Merger Sub 2), and Mr. Culliford (representing Systems, PAR, and PAR Railroads). Parties who have already submitted a notice of intent to participate are not required to resubmit an additional notice.

If a request is made in the notice of intent to participate to have more than one name added to the service list as a Party of Record representing a particular entity, the extra name(s) will be added to the service list as a "Non-Party." Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings.

SERVICE OF PARTIES OF RECORD. Each Party of Record will be required to serve upon all other Parties of Record, within 10 days of the service date of this decision, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each Party of Record will also be required to file with the Board, within 10 days of the service date of this decision, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a Party of Record after the service date of this decision must have its own certificate of service indicating that all Parties of Record on the service list have been served with a copy of the filing. Members of the United States Congress and Governors are not Parties of Record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a Party of Record.

ENVIRONMENTAL MATTERS. Under both the regulations of the Council on Environmental Quality (CEQ) implementing the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4370m-12 (NEPA), and the Board’s own environmental rules, actions with environmental effects that are ordinarily insignificant may be excluded from NEPA review without a case-by-case environmental review. Such activities are covered by “categorical exclusions,” which CEQ defines at 40 C.F.R. § 1501.4 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.”

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 Environmental Assessment (EA) or an Environmental Impact Statement (EIS). *Id.*; 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.

In its environmental rules, the Board has promulgated several categorical exclusions. As pertinent here, a rail merger is a classification of action that normally requires no environmental review if certain thresholds would not be exceeded.⁴⁰ See 49 C.F.R. § 1105.6(b)(4), 1105.6(c)(1)(i).

The Merger and Related Transactions. OEA has reviewed the data provided by Applicants, including the information on traffic projections through 2024, and based on the current record has preliminarily determined that none of the Board’s thresholds would be exceeded as a result of the Merger or Related Transactions because there would be no increase of eight trains per day or 100% increase in rail traffic or gross-ton miles. See 49 C.F.R.

⁴⁰ 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). 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. For rail lines located in attainment areas, environmental documentation normally will 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. § 1105.7(e)(5)(i). For rail lines in nonattainment areas, environmental documentation typically is required when the proposed action would result in (1) an increase of at least three trains per day on any segment of rail line, (2) an increase in rail traffic of at least 50% (measured in annual gross ton miles), (3) an increase in carload activity at rail yards of at least 20%, or (4) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any given road segment. See 49 C.F.R. § 1105.7(e)(5)(ii). OEA has confirmed that none of the lines in which there would be an increase in traffic pass through any nonattainment areas. 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 this transaction.

§ 1105.7(e)(5)(i). According to CSX, there would only be two notable traffic changes. The first would be the diversion of the daily NSR intermodal/automobile trains between Voorheesville and Ayer from the PAS line (i.e., the Northern Route) to the CSXT/P&W/Boston & Maine/PAS lines (i.e., the Southern Route) via the trackage rights being obtained by NSR (i.e., the Southern Route). (CSX Env'tl. Comment 2.) The second would be the diversion of some traffic that is local to Ayer from the Southern Route to the Northern Route. (*Id.*) CSX provides data on the expected changes in traffic volume for the Northern and Southern Routes by line segment from 2019 to 2022 as measured by gross ton-miles. (CSX Env'tl. Comment 3 & Attachment 3.) Traffic growth projections through 2024 are included in its Revised Application. (See Revised Appl., Ex. 22-D V.S. Wallace; see also Revised Appl., Ex. 14, Density Charts.)⁴¹ According to the information provided in CSX's Environmental Comment, the only line segment on the Northern Route that would see an increase in traffic would be between Mechanicville and Rotterdam Junction, where traffic would increase 24%. (CSX Env'tl. Comment 2.) CSX notes that this additional traffic would be added to existing trains and so would not result in any additional trains. (*Id.* at 2.) For the Southern Route, CSX asserts that the line segment between Worcester and Ayer would see a 67% increase in traffic, but that for all other segments, traffic would increase by 15% or less. (*Id.*, Attach. 3.)

Applicants also contend that there would not be an increase in yard activity at the Ayer Switching District that exceeds the threshold for carload activity at rail yards (an increase of at least 100%). Although the Board would have preferred that Applicants provide more precise information, including the exact figures on the volume cap threshold at the Ayer rail yard today and by how many cars it is being exceeded, the record indicates that the volume cap on trackage rights is merely being raised to more appropriately match the amount of traffic that is currently moving through Ayer. In other words, even though the volume cap would be raised as a result of the Merger and Related Transactions, the actual amount of traffic that would move through Ayer would not significantly change. Applicants provide data that appears to support this conclusion. (See Revised Appl., Ex. 22-F, V.S. Huneke 9.) In addition, Applicants forecast that traffic growth on the CSXT network, PAR System, and PAS network would be only about 1.5% from 2019 to 2024. (See Revised Appl., Ex. 13, Operating Plan 5.) Even accounting for this growth and other changes resulting from the Merger and Related Transactions, it appears that there would still only be a modest increase in traffic that falls below the threshold for carload activity of at least 100%.

Historic Review. The Board's regulations also provide that historic review normally is not required for mergers where there would be no significant change in operations and properties 50 years old and older would not be affected. See 49 C.F.R. § 1105.8. Applicants contend that no historic review is required, and it appears there would be no impacts to historic resources as a result of the proposed Merger Transaction or Related Transactions.

Preliminary Conclusions. Based on the information provided to date and after consultations with OEA, the Board preliminarily determines that an environmental and historic

⁴¹ The Density Charts in the Revised Application includes segment-specific information, but not for the specific segments between Voorheesville and Worcester along the Southern Route.

review for the proposed merger is not warranted because, based on the current record, it does not appear that the thresholds triggering an environmental review would be met, and there is nothing in the available environmental information to indicate the potential for significant environmental or historic impacts resulting from the proposed merger transaction.

While environmental concerns relating to the Wachusett Reservoir have been raised by several commenters, most of the impacts they raise are already present given that there is existing PAR carload train traffic on the line in that area. Thus, those impacts would not be caused by the Merger and Related Transactions. Although there would be some additional traffic on the line that traverses the reservoir under the Merger and Related Transactions, it amounts to only one pair of trains per day (one loaded and one empty). CSX states that those intermodal and automotive trains would be less prone to accidents and derailments than carload trains and that the number of carload trains actually would be reduced under the Merger Transaction. (CSX Env'tl. Comment 4.) In addition, CSX has committed to actively working with all interested parties to explore ways to strengthen the existing rail infrastructure in the area around the reservoir, including by agreeing to upgrade 7.6 miles of line adjacent to the reservoir to FRA Class 3 standards. (See id.; Revised Appl., Ex. 4, Env'tl. Matters 6.)

For these reasons, the Board preliminarily concludes, based on the current record, that the Merger Transaction qualifies for a categorical exclusion 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. Similarly, based on the current record, the other Related Transactions do not appear to require environmental or historic reviews.

Request that Applicants Provide Certain Additional Environmental Information. The Board does, however, find that it is 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. Even though CSXT asserts there would not be significant traffic growth during the first three years after the proposed Merger Transaction, CSXT also states that “[f]ollowing the integration of PAR and the implementation of the operating and infrastructure improvements, CSXT expects to see additional traffic growth opportunities over a multi-year horizon in certain areas.” (Revised Appl., Ex. 22-D, V.S. Wallace 7.) So that the Board can fully evaluate whether the impact of the Merger and Related Transactions would have any potential for environmental impacts warranting environmental review when the PAR System integration has occurred, the Board directs CSXT to update its projections by providing traffic forecasts through 2027—five years after the date of the anticipated year of the issuance of a final decision from the Board.⁴² For the updated projections,

⁴² Requiring this additional traffic information is consistent with the information requests that OEA issued in Canadian Pacific Railway—Control—Kansas City Southern Railway, Docket No. FD 36500, and Canadian National Railway—Control—Kansas City Southern Railway, Docket No. FD 36514, shortly after Decision No. 3 was issued in this proceeding. See also Canadian National Ry.—Control—EJ&E W. Co., FD 35087 et al., slip op. at 7 (STB served Dec. 24, 2008) (finding that use of a five-year forecast instead of a three-year forecast was reasonable). The air quality thresholds at 49 C.F.R. § 1105.7(e)(5) apply regardless of whether

and to the extent that it has not already done so in previously submitted projections (e.g., for segments on the Southern Route), CSXT should ensure that the traffic forecasts are on a segment-specific basis (using the same segments shown in CSX Env'tl. Comment). As with the forecasts that have already been provided, CSXT may submit this information under seal.

CSXT is directed to provide this information no later than **August 19, 2021** (CSXT should request an extension as soon as possible if additional time is needed to compile the updated information). Barring any such extension to CSXT, environmental comments must be submitted to the Board by **September 17, 2021**. After considering the additional information from CSXT and any public comments received during the environmental comment period, OEA will make a final recommendation to the Board regarding whether any environmental or historic review is required.

Safety Integration Plan. Even if an environmental and historic review is not required, Applicants are required to prepare a SIP. 49 C.F.R. §§ 1106.2 and 1106.3 (requiring applicants to prepare a SIP in consultation with FRA when a Class I railroad proposes to consolidate with, merge with, or acquire control of under 49 U.S.C. § 11323(a) a Class II railroad where there is a proposed amalgamation of operations as defined by FRA's regulations); see also 49 C.F.R. § 244.9. A SIP is a comprehensive written plan, prepared in accordance with FRA guidelines or regulations, explaining the process by which Applicants intend to integrate the operation of the properties involved in a manner that would maintain safety at every step of the integration process, in the event the Board approves the Merger Transaction. 49 C.F.R. § 1106.2; 49 C.F.R. § 244.9. The proposed SIP is normally included as part of the environmental record, reviewed by OEA, and put out for public review and comment during the environmental review process. 49 C.F.R. § 1106.4(b); 49 C.F.R. § 244.17. However, in cases where no formal environmental review is required under NEPA, the Board will develop appropriate case-specific SIP procedures based on the facts and circumstances presented. 49 C.F.R. § 1106.4(c). If the Board authorizes the proposed transaction and adopts the SIP, the Board requires compliance with the SIP as a condition to its authorization. 49 C.F.R. § 1106.4(b)(4).

In its original petition for a procedural schedule, Applicants proposed that the SIP be filed with OEA and FRA on what would have been 15 days after the decision accepting the "significant" transaction application. However, the Board and FRA's regulations allow for Applicants to submit the proposed SIP up to 60 days after the application is filed, which would be **August 30, 2021**. Accordingly, the Board will also allow Applicants the full 60 days to submit the SIP. Comments in response to the proposed SIP will be due on **October 4, 2021**. Applicants' response to comments on the SIP will be due on **October 18, 2021**.

SERVICE OF DECISIONS, ORDERS, AND NOTICES. The Board will serve copies of its decisions, orders, and notices on those persons who are designated on the official service list as a Party of Record or Non-Party. All other interested persons are encouraged to secure copies of decisions, orders, and notices via the Board's website at www.stb.gov.

the proposed action is a "major" transaction, like those contemplated in dockets FD 36500 and FD 36514 referenced above, or a "significant" transaction, like the Merger Transaction at issue here.

ACCESS TO FILINGS. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 C.F.R. § 1180.4(a)(3). The Revised Application and other filings in this proceeding will be furnished to interested persons upon request and will also be available on the Board's website at www.stb.gov. In addition, the Revised Application may be obtained from Messrs. LaRocca and Culliford at the addresses indicated above.

It is ordered:

1. The Revised Application in Docket No. FD 36472 is accepted for consideration.
2. The parties to this proceeding must comply with the procedural schedule adopted by the Board in this proceeding as shown in the Appendix to this decision. The parties to this proceeding must comply with the procedural requirements described in this decision.
3. CSXT shall provide updated traffic forecasts through 2027, as discussed above.
4. This decision is effective on July 30, 2021.

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

**APPENDIX
PROCEDURAL SCHEDULE**

July 1, 2021	Revised Application filed.
July 30, 2021	Board notice of acceptance of Revised Application to be published in the <u>Federal Register</u> .
Aug. 19, 2021	CSXT supplement containing 2025, 2026, and 2027 traffic forecasts due (unless extended based on a CSXT request for additional time).
Aug. 20, 2021	Notices of intent to participate in this proceeding due.
Aug. 27, 2021	Descriptions of anticipated responsive, including inconsistent, applications due. Petitions for waiver or clarification with respect to such applications due. Comments, protests, requests for conditions, and any other evidence and argument in opposition to the Revised Application or Related Transactions due. This includes any comments from the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (USDOT).
Aug. 30, 2021	Proposed SIP to be filed with OEA and FRA.
Sept. 17, 2021	Environmental comments due, addressed to the attention of OEA (unless extended based on a CSXT request for additional time).
Sept. 28, 2021	Responsive, including inconsistent, applications due.
October 4, 2021	Comments in response to the Proposed SIP due.
October 18, 2021	Responses to comments, protests, requests for conditions, and other opposition due, including to DOJ and USDOT filings. Responses to responsive, including inconsistent, applications due. Rebuttal in support of the Revised Application and Related Transactions due. Applicants' response to comments regarding the SIP due.
Nov. 17, 2021	Rebuttal in support of responsive, including inconsistent, applications due.

TBD	Public hearing (if necessary). ⁴³
Jan. 3, 2022	Final briefs due. ⁴⁴ (Close of the record.)
April 1, 2022	Service date of final decision.
May 1, 2022	Effective date of final decision.

⁴³ The Board will decide whether to conduct a public hearing, which would be held between the filing of rebuttals and final briefs, in a later decision after the record has been more fully developed. See 49 U.S.C. § 11324(a) (“The Board shall hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.”).

⁴⁴ The Board will also determine the page limits for final briefs in a later decision after the record has been more fully developed.