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June 21, 2021

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The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36500, *Canadian Pacific Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Canadian Pacific Applicants¹ submit the following in response to the Reply filed by Kansas City Southern (“KCS”) on June 16 in this proceeding.

KCS’s Reply – and its near-contemporaneous actions taken in support of its litigation strategy – have altered the landscape relative to conditions as of the time CP filed its Petition for Expedited Declaratory Relief (CP-18), and threaten to deny the Board and the public the benefit of CP’s forthcoming Application in this docket presenting a procompetitive alternative to the anticompetitive control transaction being pursued by CN. On the eve of filing its Reply, on June 15, KCS for the first time formally requested that “CP promptly return or, at CP’s option, destroy all written or electronic Confidential information received from or on behalf of [KCS], without retaining any copy or extract of it in any form, and confirm such destruction in writing to [KCS].”² CP appreciates the fact that KCS is currently bound by contract to support CN’s acquisition of KCS, and that KCS Reply accordingly reflects a strategy devised by Canadian

¹ Canadian Pacific Applicants are Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively “Canadian Pacific” or “CP”).

² June 15, 2021 Email from A. Godderz (KCS) to J. Ellis and J. Clement (CP) re: Notice (Exhibit 1 hereto).

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National (“CN”) to impede CP’s ability to prepare its own, competing Application, which CN has stated publicly should not be allowed.³

CP submits this response for the limited purpose of (1) explaining why the relief that KCS desires – forcing CP into the CN docket as an “inconsistent applicant” – is not warranted and not in the public interest, and (2) placing into the record evidence of the concrete harms in the form of wasted effort and cost that would be occasioned by the path that the Reply proposes. The Board should accept this response in the interest of a more complete record, and as CP’s reply to KCS’s *de facto* request to dismiss Finance Docket No. 36500.

1. There is no ambiguity about what the Reply demands of CP: that CP scrap all of the work it has done to date to prepare a merger application in this docket using KCS confidential information (which, as explained in the attached verified statements of Michael Baranowski (Exh. 3) and Sean Cline (Exh. 4), is nearly complete but for needed access to additional KCS information); do nothing for several months, awaiting a possible CN merger application; and then seek to obtain the same KCS information all over again in discovery, no doubt against CN resistance, in order to start all over again from scratch to prepare – in very limited time – an “inconsistent application” in the CN docket. The Reply is shamelessly seeking to handicap, if not eliminate, the CP/KCS alternative so as to constrain the Board’s evaluation of the potential for consolidation involving KCS to serve the public interest.

2. The Reply’s suggestion that CP might proceed with an application using only publicly available information is equally disingenuous. Forcing CP to scrap the detailed operating plan, traffic analyses, and other components that are underway, and substitute CP’s best guess at the combined railroad’s operations, finances, and other important details would render it impossible for CP to prepare an application that would meet the Board’s rigorous standards for public interest review. The Board should not want any major merger application to make assumptions that may lack foundation about half of what a combined network would look like. *See* Cline V.S. at ¶ 5. The CP/KCS operating plan that CP has nearly completed is based on models for system-wide train scheduling, blocking plans, traffic density, equipment

³ CN UBS Global Industrials and Transportation Virtual Conference Transcript (June 8, 2021) at 10-11 (remarks of S. Finn) (“So, [we’re obviously of the view], and we’ll have a chance to review this for KCS, that [that] is *not in the best interest of the parties to have two parallel applications and we think the STB will decide that in due course*. But we’ll be looking forward to see KCS’ response to the application by CP to continue to be exchanging information with the KCS notwithstanding the fact that their merger agreement has been terminated. And obviously, I think, the STB by ruling yesterday that they would give the full 20 days to KCS, they want to make sure that KCS has the time and the reflection to provide appropriate comments [why] that would not be a good idea”) (emphasis added, with corrections from webcast, https://event.webcasts.com/viewer/event.jsp?ei=1470609&tp_key=5368907d27) (excerpts are Exhibit 2 hereto).

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utilization, and projected growth that rely heavily on detailed information from both CP and KCS. It cannot be a one-sided project. *Id.*

3. The Reply fails entirely to address the extraordinary prejudice that both CP and the public interest would suffer were CP forced to discontinue and destroy its work on its pending Application. As the attached Verified Statements of Sean Cline and Michael Baranowski establish, since March 2021 a dedicated group of 50 CP employees have been working around the clock to collect, analyze and model data to provide the STB with a meticulously prepared Application. This work was a combined effort not only of CP employees, but also of a number of outside consultants, who collectively invested approximately 15,000 hours and \$3 million towards preparing CP's forthcoming Application. Cline V.S. at ¶ 4. Without ongoing access to KCS's information and data, the vast majority of that preparatory work would likely be rendered useless. *Id.*

4. The Reply does not even attempt to suggest that CP's continued access to KCS's information would impose any undue burden on KCS. As to the information that CP already has – and merely seeks the ability to continue using (all subject to the Board-entered protective order, of course) – KCS need not do anything. For the modest additional information CP needs to complete its Application, this is information that – until CN persuaded KCS's board of directors to terminate the CP merger agreement – KCS agreed to provide CP. This is information that KCS will now be providing to CN – if it has not done so already – in connection with CN's own forthcoming merger application. CP would be satisfied were it given access to information germane to a CP/KCS combination in the same form and at the same time as KCS provides comparable information to CN. The only impact of the access CP seeks is to make a CP/KCS application more useful to the Board and the public in assessing the merits of the CP/KCS alternative. CN's private interest in limiting the Board's view of the merits to its own application is not in line with the Board's role in carrying out the public interest.

5. The Reply's effort to deny the existence of a "controversy" is betrayed by its own arguments, which reinforce and expand the extent of the actual controversy – namely, KCS's demand that CP shut down its work on an Application immediately, and its claim that CP is in "violation" of its undertakings to KCS. Even more fundamentally, the Reply's suggestion that KCS's entitlement to the return or destruction of data is so clear that there is no actual "controversy" misapprehends the relief CP seeks. CP does not ask the Board to interpret or apply any private contract between CP and KCS. Instead, CP invokes the Board's inherent authority to authorize discovery from one party to a proceeding to another in order to serve a public purpose. *See* 49 C.F.R. § 1114.21. That KCS disputes CP's entitlement to that relief is all the controversy the Board needs to act.

6. To the extent the Reply means to say that the Board may not act because of KCS's alleged contract rights, that position would lack merit. Not only does KCS's contract say

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nothing about whether it shall be free from Board-ordered access to information, a contrary contractual requirement could not stand as an obstacle to Board action. The Board has made clear that a party “cannot effectively preclude [the Board’s] approval of a transaction from going forward simply by entering into a contract that purports to prevent all alternatives to its own preferred outcome.” *CSX Corp. & CSX Transportation, Inc. – Control & Merger – Conrail Inc. & Consolidated Rail Corp.*, Finance Docket No. 33220 (Decision No. 5 served Jan. 9, 1997), at 5.

7. The Reply’s position that CP must wait to file an “inconsistent application” in the CN Docket is not a path consistent with the public interest in the unique facts of this case, where this separate docket has been active since March and where CP – initially with KCS’s cooperation – has expended extraordinary effort preparing a merger application that will present the many public benefits of a CP/KCS combination.

(a) There is nothing exclusive about the “inconsistent application” path for the Board’s consideration of alternative proposals to control a major railroad. In prior cases, the ICC reviewed multiple proposals in separate, parallel dockets commenced separately. *See, e.g., Norfolk & Western Ry. & Baltimore & Ohio R.R. – Control – Detroit, Toledo & Ironton R.R.*, Finance Docket No. 28499 (Sub-No. 1), 295 I.C.C. 425 (1979);⁴ *Southern Pacific Co. – Control – Western Pacific R.R. Co.*, Finance Docket No. 21314, 327 I.C.C. 387 (1965) (second application filed within two weeks of first).

(b) The “inconsistent application” path would squander all of the work to date in Finance Docket No 36500, especially the work that CP has been undertaking on its application to control KCS, but also including the work of the Board and the public in addressing the rules that should govern the CP/KCS proceeding.

(c) CP appreciates the burdens and complexities that may be placed on the Board and Board Staff from having parallel applications, and is prepared to work cooperatively to minimize those burdens. The Board, for example, could consolidate the service lists of the two dockets, address both in a single opinion on the merits if that proved efficient, and consider certain other matters in an appropriately coordinated fashion, again to the extent that proved efficient. But the solution is not to require CP to start all over sometime in the future and pursue an inconsistent application from scratch through discovery that would inevitably be burdensome for all concerned, add considerable cost and delay, and possibly jeopardize altogether CP’s ability to present a complete application.

⁴ Though GTW, the second-in-time applicant, was at times referred to as the “inconsistent applicant,” its application was submitted in an entirely separate docket.

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(d) CP was planning to submit its Application herein on or shortly after June 28. CP believes it would be in the public interest for it to be able to present its Application at the earliest possible date, but – were it advantageous from the standpoint of the Board’s processes, as well as to minimize the degree to which KCS must gather and provide information separately to CP and CN – CP would be prepared to wait until August 20 to file its application, the date CN has said it plans to file its own Application. *See* Finance Docket No. 36514, Notice of Intent (CN-1) (Apr. 21, 2021) at 5. In this fashion, the two alternatives may be placed before the public and the Board simultaneously, and the Board will be able to weigh and compare two concrete alternative transactions, side-by-side and at the same time. In the event that the contingencies associated with CN’s bid for KCS (including the need for voting trust approval) fail, the Board and the public interest will benefit from the review of a CP/KCS application being well along so that CP and KCS would be able to deliver the tremendous public benefits the CP/KCS transaction promises as promptly as possible.

8. There is no merit to the suggestion in the Reply that granting relief to CP here would open the floodgates for hostile efforts to coerce unwilling railroads to cooperate with unwanted takeover attempts. This is not such a case. KCS had entered a binding agreement to be acquired by CP; CP and KCS cooperated closely to document the benefits of a CP/KCS combination – a “perfect fit,” according to KCS at the time – and KCS supplied information to CP in order to support the preparation of a joint Control Application. Now, even though KCS’s contract with CN obligates it to resist CP’s efforts to present a CP/KCS alternative, KCS is in the process of providing CN the very same information that CP needs access to in order to complete its Application. A narrow ruling for CP on its Petition in this unique case will not encourage unwanted suitors, especially for railroads that do not wish to be sold.

For the foregoing reasons, CP respectfully requests that the Board grant CP’s request for a declaratory order confirming that CP may have continuing access to the information from KCS needed to prepare its Application and related regulatory submissions in this docket.

Respectfully submitted,



David L. Meyer

*Attorney for Canadian Pacific
Railway Limited*

Attachments

cc: All Parties of Record

EXHIBIT 1

**JUNE 15, 2021 EMAIL FROM
A. GODDERZ (KCS) TO J. ELLIS AND J. CLEMENT (CP)**

From: Adam Godderz <AGodderz@KCSouthern.com>
Sent: Tuesday, June 15, 2021 4:16 PM
To: Ellis, Jeffrey J. (Canadian Pacific Railway Ltd.) <jeff_ellis@cpr.ca>; 'James Clements' <James_Clements@cpr.ca>
Cc: Rosenblum, Steven A. <SARosenblum@WLRK.com>
Subject: Notice

*** EXTERNAL EMAIL ***

Dear Jeff and James:

Reference is made to the Confidentiality Agreement (the "Agreement"), dated as of December 9, 2020, by and between Canadian Pacific Railway Limited, a corporation incorporated under the laws of Canada ("CP"), and Kansas City Southern, a Delaware corporation (the "Company"). Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Agreement.

The Company hereby requests that, in accordance with paragraph 6 of the Confidentiality Agreement, CP promptly return or, at CP's option, destroy all written or electronic Confidential Information received from or on behalf of the Company, without retaining any copy or extract of it in any form, and confirm such destruction in writing to the Company; provided that CP and its Representatives may retain Confidential Information to the extent it is required by law or to the extent it is backed-up on its or their (as the case may be) systems or servers pursuant to bona fide document retention policies, is not available to any user (other than those personnel whose role is to manage such document retention policies (and only in such capacity) and who are not otherwise end users of such information) and cannot be expunged without considerable efforts.

Nothing herein shall be deemed to modify or amend the Agreement, which shall remain in full force and effect, including the obligations of CP and its Representatives to continue to hold in confidence all Confidential Information in accordance with the terms of the Agreement.

We would very much appreciate if you could confirm receipt of this email at your earliest convenience.

Best,
Adam

Adam Godderz
Senior Vice President-Chief Legal Officer and Corp. Sect.
Kansas City Southern
427 West 12th Street | Kansas City, MO 64105
Office: 816.983.1360 | Cell: 816.809.3732
Email: agodderz@kcsouthern.com<mailto:agodderz@kcsouthern.com>

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Please be advised that this transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If you are not the intended recipient, please do not read, copy or re-transmit this communication. If you have received this communication in error, please notify us by e-mail (helpdesk@wlrk.com) or by telephone (call us collect at 212-403-4357) and delete this message and any attachments.

Thank you in advance for your cooperation and assistance.

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EXHIBIT 2

**CN UBS GLOBAL INDUSTRIALS AND TRANSPORTATION
VIRTUAL CONFERENCE TRANSCRIPT EXCERPTS
(JUNE 8, 2021)**

08-Jun-2021

Canadian National Railway Co. (CNI)

UBS Global Industrials and Transportation Virtual Conference

CORPORATE PARTICIPANTS

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

OTHER PARTICIPANTS

Thomas Wadewitz

Analyst, UBS Securities LLC

MANAGEMENT DISCUSSION SECTION

Thomas Wadewitz

Analyst, UBS Securities LLC

Welcome everybody to the First Day of the UBS Industrials and Transports Conference. I will – My name is Tom Wadewitz, I'm the Free Transports analyst at UBS. I will be hosting panels and fireside chats through the day, focused on transports. It's a real pleasure for me this morning to kick things off with Canadian National. I think they've got a lot of interesting things to talk about. Obviously, we've got JJ Ruest, the CEO; Sean Finn, the Chief Legal Officer; and Paul Butcher, the Vice President of Investor Relations. I'm going to hand it over to Paul and we're going to get into the fireside chat fairly quickly. But JJ, Sean, Paul, thank you for joining us.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

Thank you, Tom.

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

Yeah. So, thank you, Tom.

Thomas Wadewitz

Analyst, UBS Securities LLC

Yeah.

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

So, before we begin, I'd like to draw your attention to the forward looking statements and additional legal information which are available at the beginning of the presentation. As a reminder, today's conference call

going to do so. But I can tell you, we selected to go under the current/new rules. We didn't ask to be exempt from those rules. So, we did so with a clear understanding what that contemplated for us going forward, with us being able to make our case by which we understand very much both railways CN and KCS.

And we're confident that in the context of the STB application, the control application, which we'll file probably in October – September or October, we'll address those issues, and we're looking at them in great detail. But obviously, what we decided to proceed under the so-called current rules, because they're no longer new, they're now 25 years old, we did so with a clear understanding of what the downstream effects might be and how we'd address them in the overall application.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Okay. What – how do you think about the [indiscernible] (00:28:02) – I guess, [indiscernible] (00:28:05) of the public interest analysis that STB could do. Do you think that it's possible that they do kind of a mini-merger analysis and look at things, the five criteria in some detail and potentially take comment periods as building a record, recognizing there's [ph] less ability (00:28:26) to build a record with a short comment period versus a full review? And then also how do you think about the potential for them to consider a comparative analysis? CP has continued to move forward with their applications, even though they no longer have an agreement with KCS. So, how do you think about the kind of the [indiscernible] (00:28:45) of what STB may look at in voting trust and also about, is it even possible that they end up doing kind of a comparative analysis as part of a voting trust or a merger review?

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Well, obviously, the agencies are very, very competent and has expertise on a lot of areas that are addressed in the overall voting trust applications. So, we're very confident that they'll do the work that could be done to get satisfied [ph] that it's in the (00:29:12) public interest if that's the KCS shareholders have access to a voting trust. And obviously, the ultimate test here is we should allow the KCS [ph] shareholders (00:29:25) to decide who is the best partner for them with respect to the sale of their interests in the KCS and the company itself. Obviously, we've submitted a very detailed joint petition. So obviously, we felt compelled to make sure that we had all the facts and all the law in front of the STB.

So, we think we've done pretty detailed [indiscernible] (00:29:45) submission. And I think that it's recognized that in some cases comments we made in the overall voting trust submission is almost as strong as [ph] some comments you'd (00:29:55) have seen in our overall control application, but notwithstanding that [ph] want (00:29:57) to make sure [indiscernible] (00:29:58) of the STB. As you know, we've asked them to adopt a procedural schedule. We had proposed a 10 day comment period. We're still waiting that decision from STB on what – what would be the procedural schedule for the voting trust. Obviously, they've already approved one voting trust, this one is identical. We think we have addressed the comments that were set out in the decision of May 17.

So, we'll wait to see how the STB proceeds when it comes to the procedural schedule. But we're comfortable with the 10-day period, 20-day period of comments. But obviously, that will be determined by the STB in the coming days and there'll be a period for comment and that's – under the current rules that was provided for. With respect to having a parallel [ph] control (00:30:40) application, as you probably saw on last night the STB issued a decision providing the full 20 days for KCS to comment on the request by the other bidder to continue to have access to all the information that KCS we're sharing with them prior to them terminating the merger agreement and signing up with CN.

So, [ph] we'll obviously review (00:31:03) and we'll have a chance to review this for KCS, that is not in the best interest of the [ph] party to (00:31:09) have two parallel applications and we think the STB will decide that in due course. But we'll be looking forward to see KCS' response to the application by CP to continue to be exchanging information with the KCS notwithstanding the fact that their merger agreement has been terminated. And obviously, I think, the STB by ruling yesterday that they would give the full 20 days to KCS, they want to make sure that KCS has the time and the reflection to provide appropriate comments [ph] where that would not (00:31:42) be a good idea.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Right. Okay. I've had a couple of questions that have come in that I'll try to work in here. I think one you were talking about the procedural schedule. Do you have a specific date in mind that is a timeframe they're required to give you a response on procedural schedule and are there any other kind of, I guess, decisions or elements [ph] of (00:32:09) feedback you're looking for from STB in the near term?

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Yeah. There's no deadline [ph] per se (00:32:15). Normally, it would have been 20 days. And it's important to realize we filed our procedural schedule on May 18. And then obviously our petition for voting trust on May 26, so if it's 20 days or 10 days depending on this deadline [indiscernible] (00:32:34), but we expect in the coming days, the STB is quite busy, they have a lot in their plates [ph] obviously (00:32:39). So, we're very, very understanding that they have to do this in an organizing structured fashion. And we're looking forward to see a procedural schedule as soon as possible under the circumstances. So, we're not going to push – [indiscernible] (00:32:57) to ensure that this is done right and if they're comfortable that the [indiscernible] (00:33:01) select when it comes to comments will allow the parties to make comments in a organized and structured fashion.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Well so you – I mean you mentioned a 20-day rule, but you're saying you're not sure if that 20-day rule applies or not?

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Yeah. Well, STB has a certain [ph] amount of discussion (00:33:22) obviously. But we [ph] would (00:33:24) expect in the coming days to have a decision on the procedural schedule based on one of the two dates either May 18 or May 20.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Okay. Let's see, what about appeal, I think there's some debate about how would an appeal work, how do you do – I forgot the term, an appeal within STB, I forgot the technical term for that or you go straight to an appeals...

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Reconsideration – a reconsideration – yeah, reconsideration is the term you're looking for, Tom?

EXHIBIT 3

VERIFIED STATEMENT OF MICHAEL BARANOWSKI

VERIFIED STATEMENT OF MICHAEL R. BARANOWSKI

1. I am Michael R. Baranowski, Senior Managing Director at FTI Consulting (“FTI”), a global management consulting firm headquartered in Washington, D.C. I joined FTI in June of 1998, after having worked for another consulting firm, Klick, Kent & Allen, for over 10 years. As part of my role, I provide financial and economic consulting services to companies involved in the transportation industry. I have been involved in a significant amount of regulatory consulting work for clients appearing before the Surface Transportation Board (the “Board”), including all of the current Class I rail carriers. I hold a B.S. in Accounting from Fairfield University and have pursued supplemental finance studies at Kean College in Union, New Jersey.

2. On March 21, 2021, I was hired by Canadian Pacific Railway Limited (“CP”) to provide assistance in connection with analyses supporting CP’s application for Board authorization to control Kansas City Southern (“KCS”) (the “Application”), including analyses relating to traffic studies and operating economies.

3. My mandate with CP consists of providing supporting analysis for the CP/KCS application, particularly by quantifying cost savings resulting from merger-related efficiency gains and other benefits. My team and I have also been asked to assess the amount of additional rail traffic that the merged networks will be able to attract and use that information in conjunction with the efficiency.

4. Since March, my colleagues at FTI and I have dedicated approximately 1,500 hours towards the completion of the rail-to-rail traffic studies and synergy analyses. I estimate the studies I have been tasked with preparing are at approximately 75% completion.

5. The underlying data my team and I need to complete the analyses in support of the Application comes from three main sources: public and private registries held by third parties, including the Board's Carload Waybill Sample data; data held by CP; and data held by KCS.

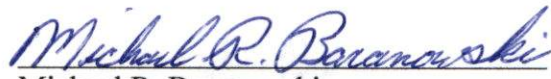
6. While the bulk of the work is already completed, needed refinements cannot be accurately completed without a continued access to documents and information that can only be obtained from KCS. Specifically, we have yet to receive certain data from the KCS marketing and commercial teams, preventing us from confidently predicting achievable transaction-related traffic gains. In addition, we have not had access to detailed information from KCS regarding labor, equipment and maintenance costs nor any operating expenses and associated operating metrics related to their Mexican operations. We have relatively sparse data, which means that our analyses will yield only approximations of the efficiency gains and related benefits from a merger with CP. Receipt of the actual detailed data from KCS would allow more refined and precise calculations, presenting the most accurate representation of the public benefits from the proposed transaction.

7. Not being able to use KCS's confidential data at all, including that which we have already incorporated into our analyses (based on material voluntarily provided by KCS in furtherance of the then-joint application) would present a much more serious set of consequences. Publicly available information, even augmented by the Carload Waybill Sample data, would not be sufficient to prepare a reliable set of analyses. With an operating plan containing about only half of the required information and data, I would have no real foundation upon which to calculate merger-related efficiencies in a meaningful way. In my opinion, and based on my experience working with the Board, even the best possible merger benefit studies developed under such circumstances would be too speculative to meet the Board's expectations.

VERIFICATION

I, Michael R. Baranowski, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 20th day of June, 2021.



Michael R. Baranowski
Senior Managing Director
FTI Consulting

EXHIBIT 4

VERIFIED STATEMENT OF SEAN CLINE

VERIFIED STATEMENT OF SEAN CLINE

1. My name is Sean Cline. I am the Managing Director, Integration Office, at Canadian Pacific Railway Limited (“CP”). I joined CP in August of 1991, performing various leadership and project management roles for internal projects and for the Information Services Department. Six years ago, I began serving in leadership roles on the Information Services Lead Team, up until taking on my current role in May 2021. I now lead CP’s Integration Office, which is responsible for the preparation of CP’s application seeking Board authority to control Kansas City Southern’s (“KCS”) (the “Application”), notice of which was filed jointly by CP and KCS on March 22, 2021.

2. Upon the public announcement of the transaction between CP and KCS, I was officially tasked with overseeing and supervising a multi-disciplinary team comprised of in-house and external consultants, engineers and other experts whose mandate is to develop the Application, including detailed plans for the combined system’s operations and safety integration.

3. I am submitting this statement to convey the extent to which CP’s efforts to prepare the Application would be impacted if CP were prevented from accessing KCS’s confidential information, including potentially having to return or destroy all confidential information CP has thus far obtained from KCS in connection with this proceeding.

4. The application that CP has been putting together for the past 10 weeks is near completion. Since March 22, a dedicated group of 50 CP employees have been working around the clock to collect, analyze and model data to provide the STB with a meticulously prepared application. This work was a combined effort of not only CP employees, but also of a number of outside consultants. Among these teams, approximately 15,000 hours and \$3 million have been invested towards achieving that goal. Without access to KCS’s information and data, I believe

that the vast majority of that work would be rendered useless. We would have to throw out all of our existing analyses, which are based on the detailed KCS traffic data and other information (e.g., regarding IT systems and other matters) that KCS regards as confidential. Using only publicly available information – perhaps supplemented with waybill sample data that our consultants have access to – we would at best be able to prepare a set of plans and analyses that were largely speculative regarding the part of the combined system south of Kansas City.

5. It would be an excessively difficult exercise to prepare a credible application—meant to establish the benefits and implications of a merger between two companies—by making assumptions about half of what a combined network would look like. In particular, an operating plan, which is based on models for system-wide train scheduling, blocking plans, traffic density, description of lines, maps, equipment utilization, projected growth ton-miles and environmental assessments, cannot be a one-sided project.

6. Along with CP's data, KCS's information forms the basis of the operating models and projections CP needs to generate. Requiring our teams to redo the work without access to KCS's data would not only mean that thousands of hours of work and millions of dollars were lost, but that a viable application is potentially not achievable.

VERIFICATION

I, Sean Cline, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 20th day of June, 2021.

Sean Cline

Sean Cline
Managing Director, Integration Officer
Canadian Pacific Railway Limited