

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36500

**CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY
COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAIN & QUEBEC
RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD
CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC.**

—CONTROL—

**KANSAS CITY SOUTHERN THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN
RAILWAY COMPANY**

**COMMENTS OF
THE AMERICAN CHEMISTRY COUNCIL AND
THE FERTILIZER ON
NOTICE OF PROPOSED PROCEDURAL SCHEDULE**

The American Chemistry Council (“ACC”) and The Fertilizer Institute (“TFI”) (collectively “ACC/TFI”) respectfully submit these comments in response to the “Notice of Proposed Procedural Schedule and Request for Comments” issued by the Surface Transportation Board (“STB” or “Board”) in a decision in this docket served on November 2, 2021 (“Notice”). On March 22, 2021, Applicants¹ filed a “Petition to Establish Procedural Schedule” in this

¹ “Applicants” are Canadian Pacific Railway Limited (Canadian Pacific), 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 & Hudson Railway Company, Inc. (collectively, CP) and Kansas City Southern and its U.S. rail carrier subsidiaries, The Kansas City Southern Railway Company (KCSR), Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, KCS) (CP and KCS collectively, Applicants).

proceeding. In the Notice, the Board proposes a modified version of that schedule that is slightly longer. In general, ACC/TFI harbor concerns that the proposed schedule does not adequately account for discovery of the Applicants, especially should there be any disputes. Subject to that caveat, ACC/TFI support the Board's proposed schedule with one modification.

In both the Applicants' and the Board's proposed schedules, there are just 90 days for filing "comments, protests, requests for conditions, and any other evidence and argument...." ACC/TFI request that the Board extend that period by two weeks, which also would shift all subsequent dates in the schedule by two weeks. The Thanksgiving, Christmas, Hannukah, and New Years' holiday season falls squarely in the middle of that 90-day window, during which stakeholders are expected to conduct discovery, negotiate with Applicants for conditions, and prepare comments if those negotiations are unsuccessful. Because many key individuals for both Applicants and stakeholders will be on holiday at various times throughout November and December, conducting and coordinating the foregoing activities undoubtedly will be more complicated and require more time than otherwise would be the case. A modest two-week extension would provide the necessary time to prepare comments without infringing upon holiday activities.

Should discovery disputes arise, however, ACC/TFI urge the Board to express its willingness to extend the procedural schedule as necessary to ensure that those disputes can be resolved and stakeholders have adequate time to obtain, process, and incorporate the produced information into their submissions. In prior major merger proceedings, the Board appointed an Administrative Law Judge to expeditiously decide discovery disputes and Applicants maintained all discovery responses in libraries at their counsel's offices for any party to review and obtain copies. In addition, all the Applicants' witnesses were subject to depositions. None of that is

contemplated in the proposed procedural schedule. It remains to be seen whether discovery disputes arise, and depositions are requested. Therefore, ACC/TFI ask the Board to express its willingness to modify the procedural schedule to accommodate delays caused by discovery issues.

For the foregoing reasons, ACC/TFI request a modest two-week extension for submitting comments, protests, requests for conditions, and any other evidence and argument. In addition, they ask the Board to consider a longer schedule if necessary to adequately address discovery issues.

Respectfully submitted,

/s/ Jeffrey O. Moreno_____

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Dated: November 12, 2021

CERTIFICATE OF SERVICE

I do hereby certify that on this 12th day of November, 2021, I have served a copy of the accompanying “Comments” by electronic delivery upon all parties of record.

A handwritten signature in black ink, appearing to read 'Jeffrey O. Moreno', written in a cursive style.

Jeffrey O. Moreno