

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & 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

CSX TRANSPORTATION, INC. FIRST SET OF DISCOVERY REQUESTS
TO KANSAS CITY SOUTHERN AND CANADIAN PACIFIC

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Dated: October 20, 2021

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Pursuant to 49 C.F.R. §§ 1114.21-.31, CSX Transportation Inc. (“CSXT”) request that KCS (as defined below) and CP (as defined below) respond to the following discovery requests in accordance with the STB’s rules, and the Definitions and Instructions set forth below. Except as otherwise specified, these requests are for materials:

- a) maintained as an original or copy in digital form;
- b) that were produced in, are regarding, or (in the case of internal, industry, or governmental rules, agreements, regulations, or laws) are applicable to the years 2018, 2019, 2020, or the last pertinent period of the year 2021; and
- c) readily provided upon request or accessible to senior management of any organizational subdivision of KCS or CP.

Pursuant to 49 C.F.R. § 1114.30(b), responses to the requests below should be served no later than twenty days from the date of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. “CP” means Canadian Pacific Railway Limited, Canadian Pacific Railway Company, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc., individually and collectively, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.

2. “KCS” means Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, The Texas Mexican Railway Company, and Kansas City Southern de Mexico, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.
3. “Document” means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including but not limited to intra-company communications, correspondence, telegrams, memoranda, contracts, instruments, studies, projections, forecasts, summaries or records of conversations or interviews, minutes or records of conferences or meetings, records or reports of negotiations, diaries, calendars, photographs, maps, tape recordings, computer tapes, computer disks, other computer storage devices, computer programs, computer printouts, models, statistical statements, graphs, charts, diagrams, plans drawings, brochures, pamphlets, advertisements, circulars, trade letters, press releases, invoices, receipts, financial statements, accounting records, worksheets, drafts, revisions of drafts, and original or preliminary notes. Further, the term “document” includes
 - a. Both basic records and summaries of such records (including computer runs);
 - b. Both original versions and copies that differ in any respect from original versions; and
 - c. Both documents in the possession, custody, or control of KCS or CP and documents in the possession, custody or control of consultants or others who have assisted KCS or CP in the creation of those documents.
4. “Description” shall mean a statement or account giving the characteristics of something.
5. “Any” shall be construed as “all” and vice versa, as necessary to bring within the scope of the Request all information that might otherwise be construed to be outside of its scope.
6. “Including” shall be construed to mean “including but not limited to.”
7. “KCS System” shall mean all rail lines and facilities owned or operated by KCS, whether in the United States or Mexico, including rail lines and facilities that KCS utilizes via trackage rights or other joint facility or joint use agreements on another railroad.
8. “KCS subdivision” shall include any units, subdivisions, and districts of KCS for which reports and analyses are prepared to assist KCS conduct of its business, including: Springfield, Godfrey, East Saint Louis, Roodhouse, Mexico, Pittsburg, Heavener, Fort Smith, Shreveport, Alliance, White Rock, Dallas, Greenville, Shreveport Term, Vicksburg, Alexandria, Hodge, New Orleans, Lake Charles, Beaumont, Redwood Branch, Gulfport, Bay Springs, Meridian, Artesia, Aberdeen, Tuscaloosa, Counce, Yellow Creek, Rosenberg, Laredo, Caltzontzin, Toluca, Texcoco, Veracruz, San Juan del Rio, Tula, Celaya, Rio Verde, Tomasopo, Venegas, Las Cruces, Salina, Venegas, Matamoros, Saltillo, Queretaro, Monterrey. See <https://www.kcsouthern.com/en-us/work-with-us/partners/network-map>.

9. The use of the singular shall be deemed to include the plural, as appropriate in context.
10. Discovery responses should be supplemented when a supplemental response is required pursuant to 49 C.F.R. § 1114.29.
11. References to railroads, shippers, consultants, or companies include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents, and representatives thereof.
12. All uses of the conjunctive include disjunctive and vice versa. Words in the singular include the plural and vice versa.
13. To the extent materials called for herein are confidential, CSXT will protect them from disclosure to third parties in accord with the Protective Order entered in this proceeding and will solely use those materials for the purposes of this proceeding, and not for any other business, commercial, or other competitive purposes. CSXT will cooperate with counsel for KCS and CP to identify information that would warrant a confidential or highly confidential designation.
14. KCS or CP may contact Mr. Paul Cunningham, undersigned counsel for CSXT, to discuss any questions regarding these requests.

REQUESTS

- 1) Please identify and produce documents sufficient to show, regarding KCS, or regarding any traffic interchanged or forecast to be interchanged between KCS and CP before or after any CP – KCS merger:
 - a) All business reports, plans, forecasts, and analyses (including those conducted by a third-party); and
 - b) Any forecasts or analyses not otherwise identified and produced in response to request 1a) above regarding KCS's and CP's corporate structure.
- 2) To the extent not included in any response to Request 1a) above,
 - a) Please identify and produce documents regarding KCS employees, including contract employees, sufficient to show:
 - i) KCS's labor collective agreements, and any related schedule, amendment, or addendum related to any employment relationships in the United States and in Mexico; and
 - ii) The number of employees, by employee function, at each KCS location or subdivision.
 - b) Regarding KCS operating rights and rights of other carriers please identify and produce documents sufficient to show:

- i) All points at which KCS directly interchanges traffic with another rail carrier and the carrier with which it interchanges;
- ii) All points at which KCS indirectly directly interchanges traffic with another rail carrier, the carrier with which it indirectly interchanges, and the nature of the arrangements for the indirect interchange;
- iii) All trackage, haulage, or lease agreements and any governmental licenses, franchises, grants, or other authorizations (and any ongoing disputes regarding such authorizations) that permit:
 - (1) KCS to transport or have transported in KCS's account any traffic over another railroad's network or rail properties owned by a governmental entity; and
 - (2) Another railroad to transport or have transported in its account any traffic over KCS's network.
- c) Please identify and produce documents sufficient to show:
 - i) By 2-digit, 5-digit, and 7-digit STCC code, by AAR car type if applicable, and by originating, terminating, or overhead traffic types:
 - (a) KCS's total net revenue, line haul revenue, fuel surcharge, switching revenue, and all other shipment specific revenue; total revenue by provider of car and container trailer; contribution margins or profits; shipment costs including haulage, switch absorption, crew costs, and any other shipment; net-tons, gross tons, gross ton miles, net-ton miles, and train miles including road locomotives, freight train cars, unit trains, way trains, freight train cars and through trains by intermodal category by the provider of the container/trailer by originating, terminating, or overhead traffic types; KCS's locomotive unit miles train and yard switching;
 - (b) KCS's yard-switching hours by yard, train hours and train miles including road service and train-switching hours, and all train miles, including work train miles for all geographic categories for which records are regularly maintained;
 - (c) KCS's incurred cost of switching and all relevant accessorial fees received or paid by KCS;
 - (d) All KCS's net-tons, gross ton-miles, total freight cars, revenues, fuel surcharges, and fees associated with:
 - (i) Moving traffic into and out of SIT by SIT location, origin location, and destination location;
 - (ii) Interchanging traffic by subdivision/region and interchange partner;

- ii) Regarding KCS's originating, terminating, or overhead traffic:
 - (a) For KCS's Trailer on Flat Car ("TOFC")/Container on Flat Car ("COFC") equipment, the number of revenue trailers and containers loaded and unloaded picked up;
 - (b) For Multi-level cars, the number of motor vehicles loaded and unloaded;
 - (c) KCS's freight car cycle times, including cycles by fleet and cycles by month;
 - (d) KCS's gross ton miles per operating (or available) horsepower by subdivision;
 - (e) The number of KCS's operating (or available) locomotives by subdivision;
 - (f) All data used to produce KCS's official density maps, including:
 - a. Identification of the railroad divisions, subdivisions, and individual line segments for each unique density segment;
 - b. Beginning and ending mileposts for each unique density segment;
 - c. Rail and track mileage for each unique density segment;
 - d. Total density (both directions including empty and loaded trains) by segment expressed in net ton-miles or in gross ton-miles; and
 - e. KCS's fuel consumption in liters or gallons by road, and by month.
- d) Please identify and produce documents regarding KCS's assets sufficient to show:
 - i) Identification of and capacity, usage, and other operational information regarding existing and planned future KCS owned or leased trackage assets, including but not limited to terminals, SITs, yards, and intermodal facilities;
 - ii) For KCS's locomotive fleet, the number of units owned, and the number of units leased, organized by type of lease and expiry date;
 - iii) The number of freight cars held in storage, organized by fleet; and
 - iv) The maximum permissible gross weight on rail (GWR) per railcar for all KCS lines and all segments. Please produce documents sufficient to show the items and factors that limit GWR for all segments with GWR less than 286,000 lbs.
- e) Please identify and produce the current operating timetables, station lists, station books, track charts, and condensed profiles covering the KCS system.
- 3) Please identify and produce all information and documents that KCS produces in response to discovery requests submitted by other participants in this proceeding.
- 4) All workpapers submitted to the Surface Transportation Board with or in support of any filings related to this proceeding.

INTERROGATORY

If any of the documents requested above by CSXT does not provide a full response to the referenced issue, please instead offer a more complete description.

Respectfully Submitted,

/S/ Paul A. Cunningham

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Attorneys for CSX Transportation, Inc.

Dated: October 20, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing CSX Transportation Inc. First Set of Discovery Requests to KCS and CP to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Thomas McCarthy, and all parties of record in this proceeding.

/s/ Paul A. Cunningham

Paul A. Cunningham
*Attorney for CSX Corporation
and CSX Transportation, Inc.*

October 20, 2021