

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 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

**KANSAS CITY SOUTHERN AND CANADIAN PACIFIC’S JOINT RESPONSES AND OBJECTIONS
TO CSX TRANSPORTATION, INC.’S FIRST SET OF DISCOVERY REQUESTS**

Pursuant to 49 CFR Part 1114, Subpart B, 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. (collectively, “Canadian Pacific” or “CP”) and Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, “KCS”; together with CP, the “Applicants”) hereby respond and object as follows to CSX Transportation, Inc.’s First Set of Discovery Requests to Kansas City Southern and Canadian Pacific (referred to herein as the “CSXT Requests”) served on October 20, 2021 in connection with the above-captioned proceeding.

GENERAL OBJECTIONS

The following General Objections apply to each of the CSXT Requests and shall have the same force and effect as if set forth in full in response to each individually numbered CSXT Request.

1. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they purport to impose upon the Applicants burdens or duties that are greater than, or otherwise conflict with, the requirements or the permissible scope of discovery under 49 CFR Part 1114, Subpart B, or under other Surface Transportation Board (the “Board”) rules or precedents.

2. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they purport to seek information and/or documents that are not relevant to the issues raised in the above-captioned proceeding.

3. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they seek information protected from discovery by the attorney-client privilege, attorney work product doctrine, common interest, or any other applicable privilege, protection, immunity, doctrine, statute, regulation, agreement, or protective order. Any disclosure of such information is inadvertent and should not be construed as a waiver. The Applicants reserve all rights under applicable law to demand and/or require the return of all copies thereof and non-use by CSXT or by any other person or entity in this or any other proceeding.

4. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they seek the production of

documents prepared in connection with, or information relating to, possible settlement or mediation of this or any other proceeding.

5. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they call for information or documents that are confidential, proprietary, or commercially or competitively sensitive. The Applicants will make available information and documents subject to the Board's Protective Order issued in this proceeding on April 2, 2021, and all responses and documents should be treated in accordance with that Order.

6. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they purport to seek documents or information not in the Applicants' possession, custody or control.

7. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they are not proportional to the needs of the above-captioned proceeding and impose an undue burden on the Applicants.

8. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they purport to seek the production of documents that are unreasonably cumulative or duplicative of documents already in CSXT's possession, custody or control, or that are publicly available, or that are otherwise obtainable in a more convenient, less burdensome or less expensive manner than from the Applicants.

9. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they purport to seek the production of documents that are unreasonably cumulative or duplicative of documents or information encompassed by (i) the railroad control application that CP and KCS filed on October 29, 2021

in this proceeding (the “Application”), and/or by (ii) the accompanying workpapers that CP and KCS submitted to the Board in connection with their Application (the “Workpapers”).

10. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein as unduly burdensome and oppressive to the extent that they purport to require the Applicants to conduct a special study or to undertake anything more than a reasonable search for responsive information. In responding to the CSXT Requests, the Applicants will conduct a reasonable search of those accessible files in its possession in which information responsive to the CSXT Requests, as limited by the Applicants’ Objections, is likely to be located.

11. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they are unduly burdensome in failing to allow for a reasonable time for compliance.

12. The Applicants object to the definition of “KCS,” “KCS System,” and “KCS subdivision,” and the use of those defined terms, to the extent that they seek information from or about Kansas City Southern de Mexico (“KCSM”) and KCS’s Mexican operations beyond what is provided in the Application and Workpapers. KCSM is not subject to the jurisdiction of the Surface Transportation Board and the rules governing this proceeding do not require information from Mexican carriers absent an established nexus to effects on the U.S. public interest. For purposes of these responses, “KCS” will be defined only as Kansas City Southern and its U.S. rail carrier subsidiaries The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company.

13. The Applicants reserve the right to redact non-responsive material from any document provided in response to the CSXT Requests.

14. The Applicants reserve the right to provide responsive materials on a rolling basis.

15. The Applicants reserve the right to challenge the competency, relevance, materiality, or admissibility of, or to object on any ground to, the use of information requested in the CSXT Requests and in any responses the Applicants may provide thereto, in any subsequent proceeding, or further proceedings in this matter. To the extent that the Applicants provide responsive information or documents, the Applicants do not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of the Applicants' objections to any of the CSXT Requests.

16. The Applicants' Responses and Objections are based upon information presently known to them. The Applicants reserve the right to rely upon facts, documents, or other evidence that they may develop or that may subsequently come to their attention; to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS

Request No. 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.

Response to Request No. 1:

In addition to the General Objections set forth above, the Applicants object to this Request on the grounds that it is vague, ambiguous and unintelligible. The Applicants further object to this Request on the grounds that it seeks documents that are not relevant to this proceeding. The Applicants further object to this Request to the extent that it seeks information that would require the Applicants to conduct a special study.

The Applicants have already provided documents and information responsive to this Request in connection with the Application and accompanying Workpapers. To the extent this Request seeks documents or information beyond what the Applicants have already provided, in addition to the General Objections and the specific objections set forth above, the Applicants object to this Request on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of this proceeding.

Subject to and without waiving the General Objections and the specific objections set forth above, following CSXT's review of the Application and Workpapers, the Applicants are willing to meet and confer with CSXT about conducting a reasonable search for additional non-privileged and non-duplicative documents responsive to this Request (to the extent any such documents exist).

Request No. 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 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 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 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.

Response to Request No. 2:

In addition to the General Objections set forth above, the Applicants object to this Request on the grounds that it is overly broad, unduly burdensome, seeks documents that are not relevant to this proceeding, and is not proportional to the needs of this proceeding. The Applicants further object to this Request to the extent that it seeks to compel the production of documents not in the Applicants' possession, custody or control. The Applicants further object to this Request to the extent that it seeks information that would require the Applicants to conduct a special study or that is publicly available through the AAR Official Railroad Station List (OPSL).

The Applicants have already provided documents and information responsive to this Request in connection with the Application and accompanying Workpapers and Applicants' production of documents in response to discovery by other parties that will be produced to CSXT in accordance with Applicants' Response to Request No. 3, below. In addition, much of the information requested in this Request No. 2 is contained in the 100% traffic data information for KCS that Applicants have already made available (as previously stated in their Notice of Intent to File Application for Approval of Transaction Subject to 49 U.S.C. §§ 11323-25, dated March

22, 2021, and their Amended Notice, dated September 15, 2021) upon the written request of a requesting party, provided that—as contemplated by 49 C.F.R. § 1180.4(b)(4)(iii) (though not formally applicable to this transaction)—if the requesting party is a railroad or represents a railroad, Applicants’ provision of access to their 100% traffic tapes is conditioned upon the written agreement of such other railroad to provide reciprocal access to its 100% traffic tapes for use by the Applicants in this proceeding (subject to the terms of the Protective Order). Applicants note that CSXT has not yet agreed in writing to provide reciprocal access to CSXT’s 100% traffic tapes.

To the extent this Request seeks documents or information beyond what the Applicants have already offered or provided, in addition to the General Objections and the specific objections set forth above, the Applicants object to this Request on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of this proceeding.

Subject to and without waiving the General Objections and the specific objections set forth above, following CSXT’s review of the Application, Workpapers, and the discovery produced to other parties, the Applicants are willing to meet and confer with CSXT about conducting a reasonable search for additional non-privileged and non-duplicative documents responsive to this Request (to the extent any such documents exist).

Request No. 3:

Please identify and produce all information and documents that KCS produces in response to discovery requests submitted by other participants in this proceeding.

Response to Request No. 3:

Subject to and without waiving the General Objections set forth above, and subject to the parties' meet-and-confer discussions, the Applicants will make available on a rolling basis non-privileged documents responsive to this Request.

Request No. 4:

All workpapers submitted to the Surface Transportation Board with or in support of any filings related to this proceeding.

Response to Request No. 4:

The Applicants already provided CSXT with the Application and accompanying Workpapers on November 3, 2021. Subject to and without waiving the General Objections, and subject to the parties' meet-and-confer discussions, the Applicants will continue to make available on a rolling basis any additional non-privileged documents responsive to this Request.

RESPONSES AND OBJECTIONS TO INTERROGATORY

Interrogatory No. 1:

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.

Response to Interrogatory No. 1:

In addition to the General Objections set forth above, the Applicants object to this Interrogatory on the grounds that it is vague, ambiguous and unintelligible. The Applicants further object to this Interrogatory to the extent that it purports to impose upon the Applicants any burdens or duties that are greater than, or otherwise conflict with, the requirements or the permissible scope of discovery under 49 CFR Part 1114, Subpart B, or under other Board rules or precedents.

Respectfully submitted,

/s/ David L. Meyer

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Attorneys for KCS

Dated: November 9, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Joint Responses and Objections to CSXT's First Set of Discovery Requests to Kansas City Southern and Canadian Pacific to be served electronically or by first-class mail, postage pre-paid, on all parties of record in these proceedings.

/s/ Stefan Mitrovic
Stefan Mitrovic

November 9, 2021