

Wayland, Joshua

From: Wayland, Joshua
Sent: Wednesday, February 16, 2022 9:38 AM
To: Wayland, Joshua
Subject: FW: CN submission and Traffic Density Numbers
Attachments: KCS Traffic Density Pages from CP-KCS Control Application.pdf; CN-11 Public.pdf

From: Whitfield, Peter <pwhitfield@sidley.com>
Sent: Tuesday, February 15, 2022 12:36 PM
To: Gosselin, Danielle <Danielle.Gosselin@stb.gov>
Subject: CN submission and Traffic Density Numbers

Danielle,

We are still preparing information to send your way as part of CN's application. We note, however, that we ran into an issue regarding which data we need to use to calculate traffic densities because CP and KCS appear to have submitted different density numbers to OEA than they submitted in their Application. CN noted this in a Feb. 4 filing (attached). In order to resolve the density discrepancy utilizing data from the appropriate baseline year (2019), we will rely upon the numbers in Exhibit 14 of the Application. Exhibit 14 to the Application reports the gross ton miles (GTM) for 2019 for each subdivision. We do not believe CP's unorthodox approach to adjusting these figures in Exhibit 14 is appropriate. An example of what they have done is below.

- For example, on the KCS Roodhouse subdivision between Mexico, Missouri and Roodhouse, Illinois, the 2019 GTM was 6,655 thousand. See page 37 of Exhibit 14. The numbers are in thousands so "6,655 thousand" is 6,655,000 gross ton miles. CPKCS project the GTM for 2025 (year 3 after the merger) on the Roodhouse subdivision to be 4,428 thousand. See page 39 of Exhibit 14.
- In its January 28 filing, CP has "corrected" the KCS 2019 GTM numbers presented in its Application to claim that the historic number on the Roodhouse Subdivision in 2019 was actually 3,390 thousand (3,390,000). See page 9 of CP's January 28 filing. This contradictory information represents approximately a 49% reduction from KCS historic density tables in the Application.
- CP's "corrected" numbers for 2019 were derived using carload and intermodal traffic data from a single month in 2020. See page 4 of CN's February 4 filing.
- CP provided 2019 base year GTMs to the STB's environmental office for environmental review. For the Roodhouse subdivision, that GTM number is actually the "corrected" number that was derived using a single month of 2020 data. See page 11 of EI_31353 (3.39 base for Mexico to Roodhouse, which is $3.39 \times 1,000,000 = 3,390,000$). This suggests the base year GTMs submitted to the STB's environmental office would not match what CPKCS submitted in its Application density tables for any of the KCS line segments.
- We believe the appropriate data for CN to rely upon as a responsive applicant is the 2019 actual data in Exhibit 14 of the Application (which applicants have not amended or withdrawn), not data generated using a month in 2020 and then extrapolating retroactively to revise 2019 data.

Applicable document citations below

The work paper named "FD 36500 – Work Paper – HC – Trains Per Day and Gross Ton Miles – Working Copy with Haz Breakdown.xlsx" has the "corrected" density numbers from CPKCS. The source file "FD 36500 – Work Paper – HC – dwnld_Traffic_KCS" shows the 2020 carload and intermodal waybill records.

The work paper named "FD 36500 – Work Paper – HC – Traffic File – Methodology" explains the methodology using 2020 for carload and intermodal records to derive 2019 base year GTMs.

We are happy to discuss in more detail if needed.

Regards,
Peter

PETER WHITFIELD

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CN-11**PUBLIC VERSION**

February 4, 2022

By E-Filing

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 Railway Company, et al.—Control—Kansas City Southern, et al.*

Dear Ms. Brown,

Canadian National Railway Company and its rail operating subsidiaries (collectively, “CN”) submit this letter in response to the so-called “Reply to Canadian National’s Description of Responsive Application” that Applicants filed on January 28, 2022 (CP-37/KCS-24, hereafter “January 28 Reply”).

The procedural schedule adopted in Decision No. 11 does not contemplate “Replies” to descriptions of responsive applications. CN will not respond in substance to CP’s improper filing, except to say that CN will present its responsive application on February 28 in accordance with the procedural schedule. CN’s responsive application will present a full, detailed case supporting its request and demonstrate that divestiture of the Springfield Line is an appropriate remedy to mitigate harm that the merger would otherwise cause to competitive options and the adequacy of transportation. Applicants and other interested parties can respond to that application on April 22, 2022 for the Board to consider alongside other responsive applications and requests for conditions.

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Two aspects of the January 28 Reply should be addressed, however. First, the primary purpose of the January 28 Reply appears to be to ask that the Office of Environmental Analysis’s review of CN’s responsive application be separated from its review of the primary application and all other conditions.¹ This request is plainly precluded by the procedural schedule in Decision No. 11, which contemplates that OEA will be reviewing “[r]esponsive environmental information” for responsive applications during review of the primary application.² Before the January 28 Reply, Applicants had explicitly endorsed that approach, proposing that environmental review of “inconsistent and responsive applications” occur alongside the primary application.³ In fact, CP objected to an extension of the scoping period in part by arguing that the Board’s procedural schedule “gives OEA time to study” any responsive applications that were filed.⁴ Having argued that OEA had sufficient time to conduct an environmental review of responsive applications, Applicants are estopped from switching positions to now claim that there is insufficient time for the Board to conduct an environmental review of CN’s responsive application.

Applicants’ suggestion that CN’s responsive application is too complicated to be considered in the environmental review of the primary application is nonsense. The procedural schedule contemplates that OEA would conduct environmental review of not only responsive applications, but also inconsistent applications—*i.e.*, applications to acquire KCS as a whole. Environmental review of CN’s proposed responsive application will be far

¹ See CP-37/KCS-24 at 2.

² See Decision No. 11 at 17.

³ See CP-3/KCS-3, Petition to Establish Procedural Schedule at 7

⁴ See CP Letter to D. Gosselin, EI-31322 (Nov. 29, 2021) (“[I]f CN wants clarity about other conditions that may appear in responsive applications, it can look to the Board’s procedural schedule, which gives OEA time to study such future filings.”)

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simpler than the inconsistent application review that OEA was prepared to perform.

Indeed, the environmental review process for CN's responsive application is already underway. CN has begun consultation with OEA and is working to provide OEA with the information it will need to conduct its review. CN expects that the environmental review process will show that this single condition in CN's responsive application would produce more truck-to-rail diversions than Applicants project for their entire merger.

Second, it should not go unnoticed that Applicants use the January 28 Reply to openly disavow one of the key exhibits in their Application. The January 28 Reply claims that Table 1 in CN's Description of Anticipated Responsive Application presents "an apples-to-oranges comparison between two very different calculations of traffic density on the Line."⁵ But the alleged "apples" and the "oranges" come from the very same exhibit in the Application, the density charts in Exhibit 14.⁶ According to Applicants' Operating Plan, their Exhibit 14 density charts showed "projected changes in . . . traffic density on the network."⁷ But now Applicants claim that it is a "willful misrepresentation" for CN to use the Exhibit 14 density charts for their stated purpose of showing projected changes in traffic density. Applicants' bizarre attempt to claim that density numbers taken from

⁵ CP-37/KCS-24 at 9.

⁶ See CN-10 at 4 nn. 3, and 4 (citing to Application Exhibit 14 for all figures).

⁷ Application Vol. 2 at 308 ("The Traffic Density Charts contained in Exhibit 14 show the projected changes in train volumes, gross ton-miles, train miles and traffic density on the network."). Density charts are required by 49 C.F.R. § 1180.8(a)(5) (2000) (requiring submission of a "full calendar year" of density chart data).

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Exhibit 14 represent questionable data “presented by CN” cannot disguise that it is their own Application that they are attacking.⁸

Applicants purport to “correct” the KCS historical 2019 Springfield Line gross ton miles density numbers from Exhibit 14 with calculations from a highly confidential Applicant workpaper, which is not publicly available. But Applicants’ “base year” data in that highly confidential workpaper—supposedly for a 2019 base year—is derived using 2020 data for carload and intermodal traffic.⁹

Applicants assert that they used different methodologies to calculate KCS base year densities and CP-KCS growth plan densities (suggesting Exhibit 14 is unreliable). The implication of this “methodological differences” theory is that Applicants believe that Exhibit 14 is unreliable across a wide range of line segments—not just those on the Springfield Line. It thus appears that affected stakeholders across the CP and KCS networks have not been provided with accurate information about expected traffic density changes from the proposed merger.

Moreover, the “methodological differences” theory does not explain the disconnect between Exhibit 14 and the highly confidential workpaper that supposedly reflects gross ton miles for a 2019 base year. For example, Exhibit 14’s calculation of base year traffic density on the Roodhouse-Murrayville segment is 3,090 thousand gross tons—99% higher than the 25 thousand gross tons that they now claim as the “corrected” 2019 number. Such a difference obviously cannot be explained by a mere methodological difference in how KCS and CP count gross tons.

⁸ See CP-37/KCS-24 at 9 n.7 (claiming three times that numbers from Exhibit 14 were “figures presented by CN”).

⁹ Application, “FD 36500 – Work Paper – HC – Traffic File – Methodology” at 3 (noting that {{ }}); see also Application, “FD 36500 - Work Paper - HC - dwnld_Traffic_KCS” (containing carload and intermodal waybill records from 2020).

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Regardless, Applicants cannot simply walk away from representations in their Application when they become inconvenient. There is no dispute that Applicants put purported calculations of KCS 2019 base year volumes and KCS “growth plan” volumes side-by-side in the same exhibit and claimed in the Application that they were a guide to “projected changes” in traffic density.¹⁰ If the January 28 Reply were to be believed, that representation in the Application was false.

In short, in their zeal to launch an unauthorized preemptive attack on a responsive application that CN has not yet filed and is not due until February 28, Applicants confess to a major error in their own Application (which they apparently have no plans to correct). Applicants’ decision to disavow Exhibit 14 representations that they now find to be inconvenient should concern the Board and the many stakeholders who have assumed that they could rely on the Application to assess the impacts of the transaction, including planned changes in density of line segments.

* * *

CN looks forward to its continued work with OEA to develop environmental information for its responsive application, and to presenting a responsive application on February 28 that demonstrates why any approval of a CP-KCS merger should be conditioned on divestiture of the parallel Springfield Line to CN, which is committed to aggressively investing in that Line to provide a continued competitive alternative and an efficient intermodal route that will take tens of thousands of trucks off the road annually.

¹⁰ Application Vol. 2 at 308.

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Honorable Cynthia T. Brown
February 4, 2022
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Respectfully submitted,

/s/ Raymond A. Atkins

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cc: Parties of Record in FD 36500

EXHIBIT 14: TRAFFIC DENSITY
KCS Year 2019
Average Tons per Mile of Road (000)

Entity	Subdivision	Segment	Subdivision Mileposts	West/South Gross Tons (000)	East/North Gross Tons (000)	Total Gross Tons (000)
KCS	GULFPORT	HATTIESBURG,MS - DELISLE JUNCTION,MS	3.9-67.5	977	705	1,682
KCS	GULFPORT	DELISLE JUNCTION, MS-DELISLE, MS	67.5-67.5	920	371	1,291
KCS	HEAVENER	WATTS,OK - PITTSBURG,KS	128.2-236.0	30,355	10,421	40,776
KCS	HEAVENER	POTEAU,OK - WATTS,OK	236.0-326.4	28,068	10,155	38,223
KCS	HEAVENER	HEAVENER,OK - POTEAU,OK	326.4-338.0	27,906	11,034	38,939
KCS	JACKSON TO HATTIESBURG	JACKSON,MS - HATTIESBURG,MS	0-90.3	N/A	N/A	N/A
KCS	JACKSONVILLE	JACKSONVILLE,IL - MURRAYVILLE,IL	216.3-226.7	2,376	678	3,054
KCS	KCS LAREDO	LAREDO YARD,TX - ROBSTOWN,TX	2.9-146.9	25,197	12,108	37,305
KCS	KCS LAREDO	ROBSTOWN,TX - CORPUS CHRISTI,TX	146.9-157	2,562	1,334	3,896
KCS	LAKE CHARLES	DE QUINCY,LA - MOSSVILLE,LA	719-735.4	2,819	1,896	4,716
KCS	LOUISVILLE	ACKERMAN,MS - WEST POINT JUNCTION,MS	39.6-0	N/A	N/A	N/A
KCS	LOUISVILLE	LOUISVILLE,MS - ACKERMAN,MS	57.5-39.6	N/A	320	320
KCS	LOUISVILLE	UNION,MS - LOUISVILLE,MS	97.1-57.5	320	1,259	1,579
KCS	LOUISVILLE	NEWTON,MS - UNION,MS	116.7-97.1	1,259	1	1,260
KCS	MERIDIAN	NEWTON,MS - MERIDIAN,MS	0-30.9	13,388	15,150	28,538
KCS	MERIDIAN	JACKSON,MS - NEWTON,MS	30.9-95.9	13,709	18,553	32,261
KCS	MERIDIAN	VICKSBURG,MS - JACKSON,MS	95.9-140.6	18,753	15,569	34,322
KCS	MEXICO	SLATER,MO - MEXICO,MO	325.7-393.6	4,251	4,558	8,809
KCS	MEXICO	KANSAS CITY,MO - SLATER,MO	393.6-490.8	6,959	3,417	10,376
KCS	NEW ORLEANS	LATANIER,LA - BATON ROUGE,LA	691.9-788.4	7,860	6,039	13,899
KCS	NEW ORLEANS	BATON ROUGE,LA - NEW ORLEANS,LA	788.4-865	6,968	11,411	18,379
KCS	PITTSBURG	PITTSBURG,KS - KANSAS CITY,MO	3.7-128.2	37,069	14,190	51,259
KCS	ROODHOUSE	MEXICO,MO - ROODHOUSE,IL	237.3-325.7	4,167	2,489	6,655
KCS	ROSENBERG	KENDLETON,TX - HOUSTON,TX	83.3-904.5	19,569	8,761	28,330
KCS	ROSENBERG	VICTORIA,TX - KENDLETON,TX	904.5-979.3	18,414	7,592	26,006
KCS	SHREVEPORT	DE QUEEN,AR - HEAVENER,OK	338.5-433.1	31,068	10,969	42,038
KCS	SHREVEPORT	ASHDOWN,AR - DE QUEEN,AR	433.1-470.2	31,226	11,751	42,977

EXHIBIT 14: TRAFFIC DENSITY
KCS Year 2019
Average Tons per Mile of Road (000)

Entity	Subdivision	Segment	Subdivision Mileposts	West/South Gross Tons (000)	East/North Gross Tons (000)	Total Gross Tons (000)
KCS	SHREVEPORT	SHREVEPORT,LA - ASHDOWN,AR	470.2-553.4	31,995	13,787	45,783
KCS	SPRINGFIELD	MURRAYVILLE,IL - SPRINGFIELD,IL	203.7-221.7	40	3	43
KCS	SPRINGFIELD	ROODHOUSE,IL - MURRAYVILLE,IL	221.7-237.3	2,412	678	3,090
KCS	VICKSBURG	MONROE,LA - VICKSBURG,MS	0-71.5	13,206	16,801	30,007
KCS	VICKSBURG	GIBSLAND,LA - MONROE,LA	71.5-127.2	14,340	15,374	29,714
KCS	VICKSBURG	SIBLEY,LA - GIBSLAND,LA	127.2-141.4	13,163	15,497	28,660
KCS	VICKSBURG	SHREVEPORT,LA - SIBLEY,LA	141.4-165.1	32,862	21,800	54,662
KCS	VICTORIA TO ROBSTOWN	PLACEDO,TX (UP) - VICTORIA,TX	0-12.8	18,206	7,591	25,797
KCS	VICTORIA TO ROBSTOWN	ROBSTOWN,TX - PLACEDO,TX (UP)	12.8-95.6	18,206	7,595	25,801
KCS	WHITE ROCK BRANCH	RENNER,TX - DALLAS,TX	0-8.1	14	-	14

EXHIBIT 14: TRAFFIC DENSITY
KCS Growth Plan Year 3
Average Tons per Mile of Road (000)

Entity	Subdivision	Segment	Estimated Gross Tons (000)
KCS	ABERDEEN BRANCH	WEST POINT JUNCTION,MS - ABERDEEN,MS	2,856
KCS	ALEXANDRIA	SHREVEPORT,LA - PINEVILLE JCT,LA	10,899
KCS	ALEXANDRIA	PINEVILLE JCT,LA - LATANIER,LA	10,940
KCS	ALLIANCE	RENNER, TX - WYLIE, TX	4,246
KCS	ALLIANCE	METRO, TX - RENNER, TX	4,129
KCS	ALLIANCE	ALLIANCE, TX - METRO, TX	3,247
KCS	ARTESIA	MERIDIAN,MS - ARTESIA,MS	7,558
KCS	ARTESIA	ARTESIA,MS - WEST POINT JUNCTION,MS	6,725
KCS	ARTESIA	WEST POINT JUNCTION,MS - TUPELO,MS	5,964
KCS	ARTESIA	TUPELO,MS - CORINTH,MS	4,710
KCS	BEAUMONT	LEESVILLE,LA - SHREVEPORT,LA	55,914
KCS	BEAUMONT	DE QUINCY,LA - LEESVILLE,LA	61,480
KCS	BEAUMONT	BEAUMONT, TX - DE QUINCY,LA	51,294
KCS	BEAUMONT	PORT ARTHUR, TX - BEAUMONT, TX	51,740
KCS	BEAUMONT TO ROSENBERG	HOUSTON, TX - BEAUMONT, TX	36,006
KCS	COUNCE BRANCH	CORINTH,MS - SHARPS,MS	2,487
KCS	COUNCE BRANCH	SHARPS,MS - COUNCE, TN	1,984
KCS	DALLAS	DALLAS, TX - WYLIE, TX	3,773
KCS	EAST ST LOUIS TERMINAL	GODFREY, IL - EAST ST LOUIS, IL	10,153
KCS	FORT SMITH BRANCH	POTEAU, OK - FORT SMITH, AR	2,043
KCS	GODFREY	ROODHOUSE, IL - GODFREY, IL	1,451

Entity	Subdivision	Segment	Estimated Gross Tons (000)
KCS	GREENVILLE	GREENVILLE, TX - SHREVEPORT, LA	22,897
KCS	GREENVILLE	WYLIE, TX - GREENVILLE, TX	26,252
KCS	GULFPORT	DELISLE JUNCTION, MS - GULFPORT, MS	4,097
KCS	GULFPORT	HATTIESBURG, MS - DELISLE JUNCTION, MS	873
KCS	HEAVENER	WATTS, OK - PITTSBURG, KS	72,349
KCS	HEAVENER	POTEAU, OK - WATTS, OK	66,378
KCS	HEAVENER	HEAVENER, OK - POTEAU, OK	69,708
KCS	JACKSONVILLE	JACKSONVILLE, IL - MURRAYVILLE, IL	547
KCS	KCS LAREDO	LAREDO YARD, TX - ROBSTOWN, TX	55,267
KCS	KCS LAREDO	ROBSTOWN, TX - CORPUS CHRISTI, TX	32,021
KCS	LAKE CHARLES	DE QUINCY, LA - MOSSVILLE, LA	10,006
KCS	MERIDIAN	NEWTON, MS - MERIDIAN, MS	37,044
KCS	MERIDIAN	JACKSON, MS - NEWTON, MS	39,602
KCS	MERIDIAN	VICKSBURG, MS - JACKSON, MS	42,653
KCS	MEXICO	SLATER, MO - MEXICO, MO	4,848
KCS	MEXICO	KANSAS CITY, MO - SLATER, MO	7,555
KCS	NEW ORLEANS	LATANIER, LA - BATON ROUGE, LA	10,388
KCS	NEW ORLEANS	BATON ROUGE, LA - NEW ORLEANS, LA	19,756
KCS	PITTSBURG	PITTSBURG, KS - KANSAS CITY, MO	72,529
KCS	ROODHOUSE	MEXICO, MO - ROODHOUSE, IL	4,428
KCS	ROSENBERG	KENDLETON, TX - HOUSTON, TX	32,127
KCS	ROSENBERG	VICTORIA, TX - KENDLETON, TX	32,631
KCS	SHREVEPORT	DE QUEEN, AR - HEAVENER, OK	65,063

EXHIBIT 14: TRAFFIC DENSITY
KCS Growth Plan Year 3
Average Tons per Mile of Road (000)

Entity	Subdivision	Segment	Estimated Gross Tons (000)
KCS	SHREVEPORT	ASHDOWN,AR - DE QUEEN,AR	71,114
KCS	SHREVEPORT	SHREVEPORT,LA - ASHDOWN,AR	72,606
KCS	SPRINGFIELD	MURRAYVILLE,IL - SPRINGFIELD,IL	33
KCS	SPRINGFIELD	ROODHOUSE,IL - MURRAYVILLE,IL	32
KCS	VICKSBURG	MONROE,LA - VICKSBURG,MS	43,700
KCS	VICKSBURG	GIBSLAND,LA - MONROE,LA	53,539

Entity	Subdivision	Segment	Estimated Gross Tons (000)
KCS	VICKSBURG	SIBLEY,LA - GIBSLAND,LA	50,339
KCS	VICKSBURG	SHREVEPORT,LA - SIBLEY,LA	52,774
KCS	VICTORIA TO ROBSTOWN	PLACEDO,TX (UP) - VICTORIA,TX	32,199
KCS	VICTORIA TO ROBSTOWN	ROBSTOWN,TX - PLACEDO,TX (UP)	32,199
KCS	WHITE ROCK BRANCH	RENNER,TX - DALLAS,TX	1,733