

BEFORE THE
SURFACE TRANSPORTATION BOARD

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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, GATEWAYEASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

RESPONSE OF CSX TRANSPORTATION INC. TO REQUEST OF THE
REGIONAL TRANSPORTATION AUTHORITY'S REQUEST FOR EXTENSION
OF TIME TO FILE COMMENTS

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Dated: February 23, 2022

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COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC
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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**

**RESPONSE OF CSX TRANSPORTATION INC. TO REQUEST OF THE
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Responsive to the Board’s Decision No. 14 of February 22, 2022, CSX Transportation, Inc. (“CSXT”) replies to the Commuter Rail Division of the Regional Transportation Authority’s (“Metra”) February 18, 2022, Request for Extension of Time to File Comments (the “Extension Request”).

CSXT supports and joins Metra’s Extension Request for a 30-day extension until March 30, 2022, to file comments. CSXT further requests that the 30-day extension apply to (1) all parties’ submission of comments (including the comments from the U.S. Department of Justice (“DOJ”) and U.S. Department of Transportation (“USDOT”)), protests, requests for conditions, other opposition, and responsive applications; and to all future dates specified in Decision No. 11 served on November 23, 2021. Such an extension would result in this schedule:

April 29, 2022: Notice of acceptance of responsive, including inconsistent, applications, if any, published in the Federal Register.

May 23, 2022:¹ Responses to comments, protests, requests for conditions, and other opposition due, including to DOJ and USDOT filings. Rebuttal in support of the Application due. Responses to responsive, including inconsistent, applications due.

June 22, 2022: Rebuttals in support of responsive, including inconsistent, applications due.

August 1, 2022: Final briefs due.²

CSXT supports such an extension for three principal reasons. First, because of the existing schedule and the time needed for the detailed environmental impact assessment the Board has determined necessary, no party will suffer prejudice from a 30-day extension of the existing deadlines. In Applicants' request for an expedited schedule for the review of the Proposed Transaction, they argued primarily that the purported benefits from integration should not be unnecessarily delayed, and that delay would "skew[]" competition against competing private-equity bids.³ The latter concern is now moot: Applicants have placed KCS into a voting trust during the pendency of the control proceeding. As to the former, a 30-day extension to the deadline for comments will not delay integration. The proposed extension would extend the latest deadline to August 1, 2022, but the Board has until November 26, 2022, to close the record, leaving ample time for hearings and consideration by the Board. On February 18, 2022, the Board set out the scope for the analysis of the environmental impact of the Proposed Transaction, without which the Proposed Transaction cannot be consummated.⁴ The Schedule and Review Process identified on the Board's website shows that a Final EIS will be completed in the Fall of 2022. And, regardless of the proposed extension, integration cannot occur until the

¹ A 30-day extension would occur on Sunday May 22, 2022. Pursuant to 49 CFR 1104.7(a) would be the next day which is not a Sunday.

² A 30-day extension would occur on Saturday July 31, 2022. Pursuant to 49 CFR 1104.7(a) would be the next day which is not a Saturday or Sunday.

³ Petition to Establish Procedural Schedule 1-3, CP-3/KCS-3 (March 22, 2021).

⁴ Notice of Availability of the Final Scope of Study for the Environmental Impact Statement, FR Doc. 2022-03579 (February 18, 2022).

Board serves a decision granting the application, that decision becomes effective (usually 30 days after service), any necessary labor implementing agreements have been entered, and Applicants have complied with any pre-consummation requirements imposed by the Board.

CSXT, therefore, submits that the expected duration of the environmental impact analysis supplies an opportunity for parties to offer, and the Board to consider, more informative analyses of the public interest impacts of the Proposed Transaction. Expediting the submission and consideration of these analyses serves little purpose if the Board's ultimate decision must await completion of the environmental impact analysis.

Second, like Metra, CSXT has only recently received a sizable part of the discovery it sought from Applicants to evaluate the effects of the Proposed Transaction on the public interest, and more time would allow a more considered review of this discovery and development of informative views that would be to the benefit of the Board.

Material responsive to most of CSXT's Second Set of Discovery Requests to Applicants, propounded on December 24, 2021, was received only last Friday, February 18, 2022, 41 days later than the 15-day response that CSXT had requested. Applicants' initial responses to the large majority of CSXT's requests had refused to provide new information and merely directed CSXT generally to the Application or its Workpapers without even specifying the documents or passages supposedly responsive, even though CSXT's instructions in the discovery request directed such specificity, and without clarifying whether this was the entire material on which Applicants principally relied to support the contentions covered by CSXT's Interrogatories. Only after a Motion to Compel, a related conference before Judge McCarthy, and multiple rounds of meet-and-confer negotiations did CSXT receive useful supplemental responses to most of its interrogatories. Because of this delay, and because depositions were still being taken this week, it

is unrealistic to expect CSXT or other parties to offer fully-informed views five days from now that reflect the consideration of deposition testimony or late-received discovery in their analyses of the first Major Transaction in over 20 years.

Third, this morning CSXT and the other Class I freight railroads each received discovery requests from Applicants. The Requests to CSXT ask for “complete traffic tape data for the years 2018, 2019, 2020, and 2021, including all available data records for both loaded and empty movements and revenue and nonrevenue movements for the entire CSXT system, and including standard fields of information typically provided to the STB when preparing the Carload Waybill Sample.” The Request to CSXT unreasonably calls for a production of such within 5 days. It is unclear what Applicants look to learn from such information but handling these requests will be burdensome for the Parties amid preparing their responses to the Applications, which Applicants seek at the same time. If Applicants are serious about the need for such information, a comprehensive 30-day extension for filing oppositions and other required documents is prudent.

CSXT respectfully asks that the Board grant Metra’s Extension Request, apply the extension to all other parties to this proceeding, and adjust the rest of the procedural schedule by extending the future filing dates by 30 days.

Respectfully,

/s/ Paul A. Cunningham

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Dated: February 23, 2022

cc: All Parties of Record
ALJ McCarthy

CERTIFICATE OF SERVICE

I certify that I have caused the foregoing document in 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*, to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Paul A. Cunningham

Paul A. Cunningham
Attorney for CSX Transportation, Inc.

February 23, 2022