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BY ELECTRONIC 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 Ry., et al. – Control – Kansas City Southern, et al.*

Dear Ms. Brown:

Applicants¹ submit this brief reply to the responses filed late yesterday by CN CSXT (“CSXT-7”), Norfolk Southern, and Union Pacific (“UP-8”) to Metra’s Request for Extension of Time to File Comments (“METR-4”).

It is not surprising that these Class I Railroads would seize upon any opportunity to yet again attempt to delay this proceeding and the new competition that the CP/KCS Transaction ultimately will bring. Applicants oppose their requests for a delay in the Board’s procedural schedule, for which they offer no valid justification.

First, the Class I Railroads’ responses to Metra fail to comprehend the narrow scope of the relief Metra was seeking – and that Applicants have partially acceded to. Metra was not seeking to extend the time for *Applicants’ responses* to Metra’s comments, nor did Applicants propose such an extension. Applicants suggested an extension specific to Metra that was only an

¹ Applicants are Canadian Railway Limited, 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” or “Canadian Pacific”) and 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 (collectively “KCS”).

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additional 15 days in part so that Applicants would continue to have sufficient time to prepare a response to any comments that Metra might ultimately file – and that response would continue to be due on April 22. Granting an extension to all commenters – even one of only 15 days – would require extending all of the dates in the Board’s schedule, lest Applicants be denied a fair opportunity to prepare a response. Delaying the completion of the evidentiary record and ultimately the benefits of this pro-competitive, end-to-end transaction is not in the public interest.

Second, because a brief extension for Metra alone would not affect the April 22 date for Applicants’ response, it would not create the “multi track” schedule that the Class I Railroads claim to fear (though it is not clear why, given that they will not be entitled to another round of comments on the Application).

Third, the issues raised by Metra have no relationship to any of the issues raised by the Class I Railroads. As noted in Applicants’ response to Metra, the RTC files produced to Metra did not relate to the Application and did not relate to CP’s lines in or near Chicago (over which Metra operates). It would be unfair and unwarranted to predicate an extension of time for all parties on Applicants’ cooperative approach to discovery, as reflected in their willingness to give Metra RTC files despite their appearing to have no nexus to this proceeding.

Fourth, the Class I Railroads’ grumblings about discovery issues of their own are meritless. They controlled the pace of discovery and timing of depositions, not Applicants. CSXT, for example, filed discovery requests in October, before the Application was filed, but subsequently withdrew those requests and only recently pressed for responses to hundreds of detailed interrogatory responses. Had any of these issues truly warranted additional time, the Class I Railroads could have petitioned for their own extensions, but none did.

Finally, it is laughable that CSXT suggests that a delay is warranted because Applicants – facing a 55-day period in which they will have to respond to comments from every one of the Class Is seeking to block, burden, or delay the new competition brought by the CP/KCS combination – recently served discovery requests seeking information from those Class Is. The request of CSXT sought only basic traffic data of the sort the 2001 merger rules would have required each of the Class Is to provide long ago as a condition of receiving Applicants’ 100% traffic tapes, which all of them have had for months. Applicants’ discovery requests of CSXT (or any other Class I railroad) have no bearing on the ability of those railroads to comply with the long-established schedule in this proceeding – and CSXT does not claim that they do.

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Applicants look forward to receiving comments on February 28 and responding to those comments on April 22 in accord with the Board's procedural schedule.

Respectfully submitted,



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Limited*

cc: All Parties of Record
William A. Mullins, Esq.