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March 29, 2022

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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. – Control – Kansas City Southern

Dear Ms. Brown:

Applicants¹ briefly address the procedural implications of the two replies filed in response to Applicants' Response to Decision No. 16, by Norfolk Southern ("NS-10") and Canadian National ("CN-15"). Neither reply warrants any further suspension in the procedural schedule.

NS seeks 20 days (presumably from the date of Applicants' March 21 Response) to amend its filings, but there is no need for any such amendment. NS's Comments (NS-9) acknowledged that NS was aware of the proper apples-to-apples segment density comparisons (citing Applicants' February letter, which spelled out the specific workpaper in which Base Year data was available), but NS nonetheless chose to proceed to use the Exhibit 14 2019 data that it knew yielded anomalous results.² In any event, NS's Reply already corrects the one part of NS's

¹ Applicants are Canadian Pacific 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 and Hudson Railway Company, Inc. (collectively "CP" or "Canadian Pacific Applicants") 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" or "Kansas City Southern Applicants").

² See NS-9 at 21 n.56. Nor did NS seek to explore this issue in discovery. Indeed, during the

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Comments that referred to density data in NS's new table on page 8 of NS-10.

CN does not seek any further extension in the schedule, as it makes very clear that it has always understood the source of density data that allows accurate, apples-to-apples comparisons showing the anticipated effect of Transaction-related traffic changes. CN may disagree with those data, and Applicants' Rebuttal in Support of the Application will respond in substance to CN's misguided assertions. CN, however, willfully ignores Applicants' demonstration in that all of the changes from the Transaction are accurately reflected in the difference between "Year 3" vs. "Base" figures set forth in the Application Operating Plan workpapers and reproduced in Appendix B. *See* CP-43/KCS-30 at 12.

Accordingly, Applicants propose that the Board reinstate the schedule, with ten-day adjustments as follows:

April 11, 2022	Notice of acceptance of responsive, including inconsistent, applications, if any, published in the Federal Register.
May 2, 2022	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 4, 2022	Rebuttals in support of responsive, including inconsistent, applications due.
July 1, 2022	Final briefs due.

Please contact me with any questions.

deposition of Applicants' Operating Plan witnesses – at which all of the Class 1 railroads, including NS, were present – counsel for CN specifically explored the relevant density data to assess traffic increases. NS's counsel chose not to explore that issue further. *See* Deposition of Raymond A. Elphick and John F. Orr (Feb. 18, 2022) at 186-94 (testimony about density methodologies). Excerpts are Exhibit 1 hereto. Though preliminarily designated as Highly Confidential (and marked as such by the reporter), Applicants have declassified portions of the transcript.

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Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David L. Meyer". The signature is fluid and cursive, with the first name "David" being more prominent and the last name "Meyer" following in a similar style.

David L. Meyer

*Attorney for Canadian Pacific Railway
Limited*

Attachment

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

EXHIBIT 1

TRANSCRIPT OF DEPOSITION OF RAYMOND A. ELPHICK AND JOHN F. ORR (FEB. 28, 2022) EXCERPTS

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

CANADIAN PACIFIC RAILWAY LIMITED, ET AL.
- CONTROL -
KANSAS CITY SOUTHERN, ET AL.

HIGHLY CONFIDENTIAL
REMOTE VIDEOTAPED DEPOSITION OF
RAYMOND A. ELPHICK and JOHN F. ORR

DATE: February 18, 2022

TIME: 9:10 a.m. (Central)

PLACE: Veritext Virtual Videoconference

JOB NO.: PA 5063971

PAGES: 1 to 278

REPORTED BY: Merilee Johnson, RDR, CRR, CRC, RSA

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(All appearing remotely via videoconference)

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REPORTER'S NOTE: All quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.

1 So the dollars, I did not do.

2 Q. Fair enough.

3 All right. I'm going to use one more
4 document here.

5 MR. HYNES: It's the last one you have,
6 David. It's called --

7 MR. MEYER: I was hoping that. I'm
8 glad to hear that.

9 MR. HYNES: Gross Ton Miles, Train
10 Miles, Train Weight, Million Gross Tons.

11 MR. MEYER: Yes.

12 MR. HYNES: Have that marked, please,
13 as whatever the next number is.

14 MR. MEYER: I think we're at 10.

15 (Exhibit 10 was marked for
16 identification.)

17 MR. HYNES: For the record, this was
18 produced as FD36500-WP-HC-Gross Ton Miles Train
19 Miles Train Weights MGT-Methodology.

20 BY MR. HYNES:

21 Q. All right. I'd like to direct your
22 attention, Mr. Elphick, to -- let's see what page
23 this is -- page 2, which is the one right behind
24 the table of contents.

25 A. (Elphick) Page 2?

1 Q. The second page of the exhibit. The one
2 right behind the table of contents. It starts with
3 Overview.

4 A. (Elphick) Yep.

5 Q. All right. Look down there under number 2,
6 Process Flow. And specifically, let's take a look
7 at number 2 under that Process Flow.

8 It says, "Calculate gross ton miles for the
9 base model and calibrate." And then (b) says,
10 "Calculate gross miles for synergy Year 3 model and
11 calibrate."

12 Can you explain to me what you mean by
13 "calibrating"?

14 A. (Elphick) We could not go back and create
15 a comparative model to 2021 looking backwards. We
16 built a -- and that means from a density
17 perspective. What we did was we had to build a
18 model for 2021, the gross -- the density that the
19 design and the volumes and the accounts we're
20 creating in 2021 and -- and then we added the
21 growth and the forecasts and the organic going
22 forward.

23 But to go backwards, because we couldn't --
24 and didn't have a copy of the design, we couldn't
25 create a model that contrasted to the design that

1 we were using in 2021. We took our 2021 model and
2 calibrated it against GTMs in 2019.

3 Q. All right. Let me direct your attention,
4 then, to a third page. Down below the big chart,
5 there's a Section 3.2, Calculate Gross Ton Miles.

6 Do you see where that is?

7 A. Yes.

8 Q. And again, it lists a couple rules. Look
9 under 1(a). It says, "If the subdivision is owned
10 by CPRS, then the historical train weight value
11 from 2020 for the density segment was used."

12 So is that saying that basically in
13 calculating train weights, initially you used the
14 train weights historically for CP for 2020; is that
15 right?

16 A. (Elphick) That's the way I read it.

17 Q. Okay. Then flip the page. We have Section
18 (b). You can answer, Mr. Elphick, or Mr. Orr, you
19 can assist with this because it goes to KCS.

20 It says, "If the subdivision is owned by
21 KCS and KCSM, then the historical train weight
22 value from February 3rd through May 3rd, 2021, is
23 used."

24 Why were you using this -- it looks just
25 like a -- it looks like a three-month period but

1 not quite a quarter. Why was February 3rd to
2 May 3rd used for KCS?

3 A. (Elphick) I can speak to that. Again, we
4 couldn't go back and understand the design that was
5 in effect in 2019. They do not keep a record of
6 that. Their trailing tonnage data strips out which
7 train was implicated in the move. It strips out
8 whether it was a regular section -- all of --

9 The details are at a very high level in the
10 trailing tonnage data. So we built a 2021 design
11 and we had to get a sample -- and this is for
12 density purposes, not for our Operating Plan to
13 development, but to produce a trend line in
14 density.

15 We took a sample period that was relevant
16 that provided us more information on the train
17 names and the train -- the routes and the segments
18 that the trains move through. And we use that to
19 create a train weight value for our current model.

20 Q. Are you saying there wasn't any usable KCS
21 train weight data for either 2020 or 2019? They
22 have no records that would allow you to determine
23 the train weights for those -- based on those
24 years?

25 A. (Elphick) Not at a level of detail that we

1 could make use of and so -- in terms of mapping
2 through our design and so the data that they could
3 provide us was the data that we used.

4 Q. All right. Let me ask you the same
5 question for CP. We said previously you used 2020
6 train weights. Did CP not have data for 2019?

7 A. (Elphick) CP would have had data for 2019.

8 Q. And why was that not used?

9 A. (Elphick) We're trying to create a system
10 model and contrast our Optimized and Growth Plans
11 to that system model. And so there's no value in
12 creating a half a model to contrast for the design
13 as it existed in 2021 go forward.

14 Q. Are you saying that in so many words, that
15 you were forced to use the CP 2020 because KCS
16 didn't have any 2019 and all they had was this --
17 beginning part of 2021? You were trying to get
18 close to that? Is that what you're asking? Is
19 that what you're saying?

20 A. (Elphick) We're trying to build a model
21 that can break our design-integrated network
22 information for the current operation that we based
23 our Operating Plan against.

24 Q. Okay. Let's take the next sentence here,
25 and it's item (c), right below.

1 A. (Elphick) Okay.

2 Q. It says, "Train weights were calibrated
3 back to each respective railroad level for 2019 to
4 align to overall train productivity measures
5 representing 2019 in the multiyear plan for CPRS
6 and KCS/KCSM."

7 Could you please explain to me what that
8 sentence means? I could not make heads or tails of
9 it. David's laughing a little bit too. I couldn't
10 make heads or tails of that sentence. Maybe you
11 can help me.

12 MR. MEYER: For the record, I'm not
13 laughing at the sentence.

14 A. (Elphick) So we had to create a -- let me
15 just start by saying: The density information that
16 had passed had no bearing on any of our design work
17 or the output of the current plan and where we were
18 going to with an integrated network, a combined
19 network.

20 What we're talking about here was meeting a
21 requirement to create a density table that was
22 relevant to 2019 but was an apples-to-apples
23 compare through where we could baseline well and
24 out into the future.

25 And so my understanding is that the team

1 went and used the current model, the base model
2 that they built in 2021, using the weights and so
3 forth that is talked about there, and went back to
4 2019, actual GTMs, by railroad, and calibrated a
5 baseline for 2019 using the 2021 information.

6 And that is my best explanation. I have
7 system experts who can describe that in more
8 detail.

9 Q. Let me see if I can summarize it. At least
10 if I'm getting this right conceptually. For a base
11 year of 2019, you took CP 2020 train weights, KCS
12 February 3rd through May 3rd, 2021, train weights,
13 and then performed some sort of calculation to
14 index those back to 2019 to get to your train
15 weights for the base year?

16 A. (Elphick) To get back -- to get to a
17 representation of the density calculations in 2019
18 that made sense relative to the density -- or were
19 modeled against the density that we were producing
20 2021 go forward.

21 Q. All right. Thank you, Mr. Elphick.

22 Mr. Orr, I've got a few -- just a few
23 questions for you. First I want to talk about the
24 Kansas City Terminal, the Kansas City Terminal
25 Railway. KCS is a co-owner of the KCT?