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Office of Proceedings
May 23, 2022
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Public Record

May 23, 2022

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423

Re: Finance Docket No. 36500, *Canadian Pacific Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

On behalf of Applicants,¹ I write in response to Canadian National Railway Company's ("CN") May 20, 2022 request (CN-16) for a two-week extension of the deadline to file amended comments and responsive applications in this proceeding to June 16, 2022.

CN predicates its request on a claimed need to spend time understanding the changes reflected in Applicants' Amended Operating Plan (CP-47/KCS-34), but that claim is belied by CN's own extension request. As CN's extension request makes clear, CN has already reviewed those changes in detail.²

CN also bases its extension request on a mischaracterization of the changes reflected in the Amended Operating Plan as "go[ing] beyond the relatively straightforward directions

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, Delaware and Hudson Railway Company, Inc. Kansas City Southern Applicants are 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.

² CN's suggestion that an extension is warranted by Applicants' failure to provide word versions of the Amended Operating Plan is misguided. There is no affirmative obligation to do so, CN did not make any such request of Applicants, and in any event as Applicants explained to all parties, Adobe PDF software enables the creation of redlines by anyone who might have an interest in doing so. CN's counsel does not mention whether they made such a comparison themselves.

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contemplated by Decision No. 17.” CN-16 at 2. This is incorrect. In Decision No. 17, the Board directed Applicants to “amend their Operating Plan to include (1) an explicit identification of the baseline traffic density values used in the Operating Plan calculations and to be used in the environmental review; (2) a comprehensive explanation of how those values were generated; and (3) a comprehensive explanation of the rationale underlying those methodological choices,” Decision No. 17 at 6. That is exactly what Applicants did. Applicants amended the Operating Plan to make clear what base traffic should form the basis for comparisons between pre- and post-Transaction traffic levels, how those values were generated, and why Applicants made the methodological choices they did.³

As CN observes, in the course of developing the Amended Operating Plan, Applicants identified additional traffic that properly belonged in the pre-transaction base. But this was not a deviation from Decision No. 17, which contemplated “the possibility that database contents can change over time such that recreated workpapers may not return exactly the same results.” Decision No. 17 at 6. Applicants explained the source of this new baseline traffic in detail in the Amended Operating Plan (at 30-54, 76-85), and went so far as to supply a new Appendix (Appendix S) identifying on a segment-by-segment basis the changes in baseline traffic and the reasons for those changes.

Indeed, Applicants’ revisions were *narrower than* what the Board had contemplated. Decision No. 17 called upon Applicants to “amend, through the appropriate use of errata, any portions of the Application that depend on values that have changed.” Decision No. 17 at 6. In fact, however, the changes to baseline traffic reflected in the Amended Operating Plan *did not* require any amendment to other parts of the Application. The additional traffic in the base had no bearing on the manner in which the Transaction would affect the operations of the combined CP/KCS system (since that additional baseline traffic reflected unit trains of bulk and other commodities that did not require processing in yards and thus did not affect the blocking or train design of the combined railroad). All of this is explained in detail in the Amended Operating Plan at pages 82-85.⁴

Pursuant to Decision No. 17, CN is permitted to file “amended comments and/or responsive application[] that address the new information in the amended Application and use the modeled traffic density data in the resubmitted Density Workpaper, rather than the raw historical data from Exhibit 14.” Decision No. 17 at 6. CN has ample opportunity to do so within the 20 days allotted by the Board’s revised schedule, especially given that none of the

³ As also required by Decision No. 17 (at 6), Applicants also systematically updated the workpapers underlying the Operating Plan. With the errata submitted last week, CN and other parties now have the handful of additional workpapers CN describes as “missing.”

⁴ The additional yard “processing” cited by CN (CN-16 at 5) merely reflects the addition of unit trains originating or terminating at specific yards.

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changes in the Amended Operating Plan relate to the *effect of the Transaction*, which is the only legitimate issue in this proceeding. CN still has 10 days remaining (until June 2) to complete the work it began more than a week ago, when the Amended Operating Plan was served on CN's counsel.

Finally, Applicants note that a further extension would be prejudicial to Applicants insofar as it reduced the amount of time Applicants will have to address any "amendments" to Comments and Responsive Applications, particularly if such amendments exceed the scope of what Decision No. 17 contemplates. Applicants do not favor any extension in the July 12 date for their (or anyone else's) submission in response to Comments and Responsive Applications.

Please contact me with any questions.

Respectfully submitted,



David L. Meyer

*Attorney for Canadian Pacific Railway
Limited*

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