

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36500

ENTERED
Office of Proceedings
June 9, 2022
Part of
Public Record

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

CSX TRANSPORTATION, INC.'S AMENDED COMMENTS
AND REQUEST FOR CONDITIONS

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Dated: June 9, 2022

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CSX TRANSPORTATION, INC.’S AMENDED COMMENTS AND
REQUEST FOR CONDITIONS

CSX Transportation (“CSXT”) submits these Amended Comments and Request pursuant to the Board’s Decision 18.¹ CSXT first reiterates its initial comments and request (“CSXT’s Comments”) filed February 28, 2022.² Second, in light of the Applicants’ Amended Operating Plan (the “AOP”),³ CSXT emphasizes and elaborates on its request that the Board take pro-competitive actions that would assure competition for certain intermodal traffic between points west of Dallas, TX and east of Meridian, MS that can move most efficiently via Shreveport, LA and Meridian.

The Shreveport and Meridian gateways are closed for { [REDACTED] } of that traffic by a 2006 traffic division agreement between the Kansas City Southern Railway Company (“KCS”) and Norfolk Southern Railway (“NSR”) (the “Exclusivity Arrangements”). The anticompetitive

¹ See *Canadian Pacific Ry. Co. – Control – Kansas City Southern*, Decision No. 18, STB Finance Docket No. 36500 (served May 27, 2022).

² Finance Docket No. 36500, CSX Transportation Inc.’s Comments and Request for Conditions (CSXT-8) (February 28, 2022).

³ Finance Docket No. 36500, Amended Operating Plan (CP-47/KCS-34) (May 13, 2022).

effects of those Exclusivity Arrangements were never presented to or approved by the Board.⁴

Both the Original Operating Plan (the “OOP”)⁵ and the AOP project the anticompetitive effects of the Exclusivity Arrangements would be exacerbated by the Applicants’ Proposed Transaction. The OOP projected significant growth in the traffic moving over the Speedway via both Shreveport and Meridian. Compared to the OOP, the AOP projects an even greater increase in that traffic. NSR’s February 28, 2022, comments show that volumes approaching {{[REDACTED]}}⁶ of the revenue moves of that traffic are foreclosed from competition by the Exclusivity Arrangements.

The Board has the authority in this proceeding to abrogate the unlawful Exclusivity Arrangements in this proceeding and to assure that the Shreveport and Meridian gateways are opened on reasonable terms. Opening both those gateways is required to satisfy the first of CSXT’s requests for conditions:

First, CSXT requests conditions that will assure that the Board does not, by approving the Application, enshrine the existing but never sanctioned restrictions on competition for the movement of traffic over the line between Meridian MS, and Shreveport, LA, owned by a joint venture controlled by KCS and the Alabama Great Southern Railroad Company (“AGS”), a subsidiary of NSR.

CSXT-8 at 6.

⁴ While KCS noticed an exemption for an intracorporate transaction creating a joint venture with NSR to own the line between Shreveport and Meridian, that exemption did not extend to action that would adversely impact competition. It also did not cover NSR’s acquisition of control of the joint venture. *See* CSXT-8 at 11-13.

⁵ Finance Docket No. 36500, Railroad Control Application (CP-26/KCS-14), Volume 2, Exhibits 13 and 14 (October 29, 2021).

⁶ {{[REDACTED]}}
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]}}

Removing the Exclusivity Arrangements will permit but not assure those gateways are opened. In light of the heightened risk of exacerbating the harms that motivated CSXT's request, as evidenced by the AOP, CSXT is therefore clarifying its request that the Board not enshrine the existing anticompetitive restraints on the Shreveport-Meridian Line by making it explicit that this request cannot be fully satisfied unless the Board requires Applicants to open and keep open the Shreveport and Meridian gateways on commercially reasonable terms once Applicants are free from the constraints of the Exclusivity Arrangements.

I. NSR CONTROLS THE MOVEMENT OF {[REDACTED]} EAST-WEST INTERMODAL TRAFFIC MOVING OVER THE SPEEDWAY BETWEEN POINTS WEST OF SHREVEPORT, LA AND EAST OF MERIDIAN, MS.

The KCS corridor between Meridian, MS and Dallas, TX (the "Meridian Speedway" or "Speedway") is a crucial route for East-West intermodal traffic. It is a central element of the Proposed Transaction⁷ and of the transaction proposed in NSR's Responsive Application.⁸ KCS owns the western portion of the Speedway between Dallas, TX and Shreveport, LA. The eastern portion between Shreveport and Meridian is owned by the Meridian Speedway LLC, ("MSLLC"), a joint venture formed in 2006 between KCS and NSR (the "MSLLC Line"). NSR shares control of the MSLLC with KCS. That control was never approved by the Board and is unlawful but permits NSR to preclude modification of the Exclusivity Arrangements.

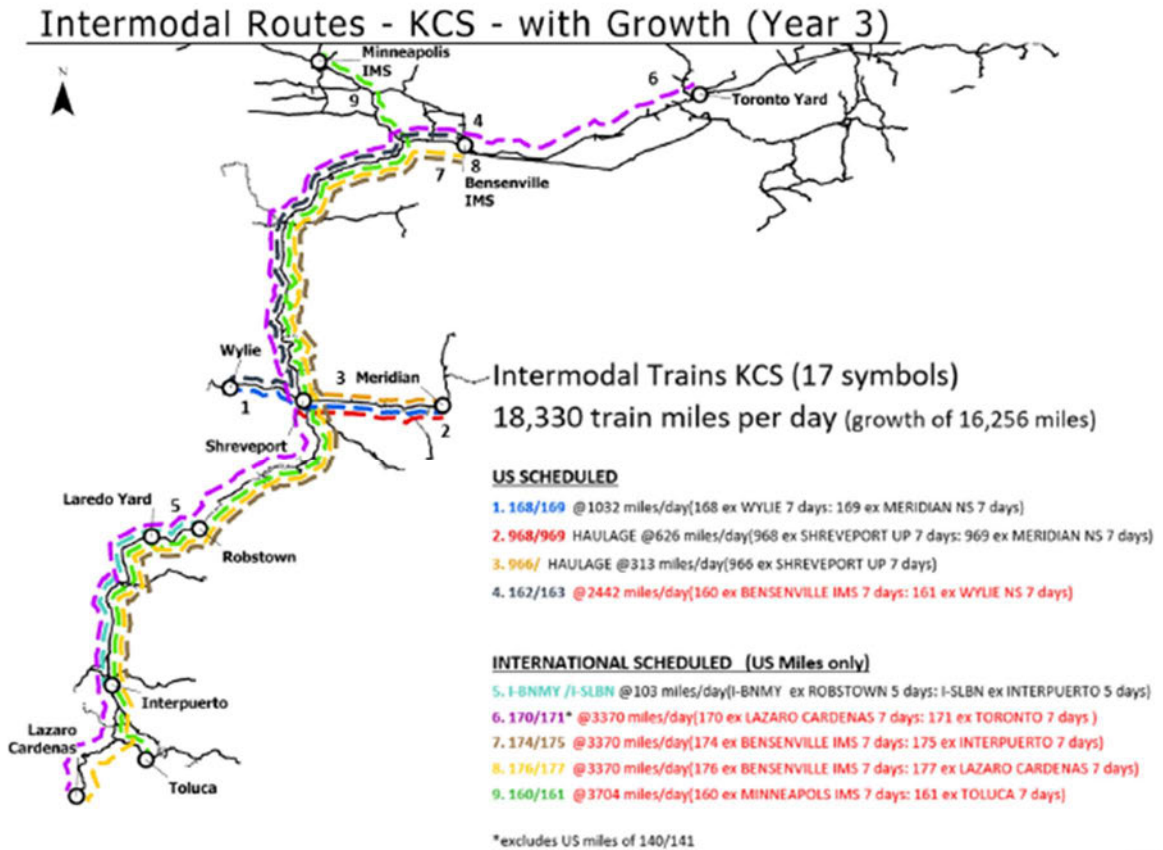
Shreveport is a major hub for KCS's east-west and north-south traffic. Applicants'

⁷ See, e.g., AOP at 22.

⁸ Finance Docket No. 36500, Responsive Application of Norfolk Southern Railway Company (NS-8) (Feb. 28, 2022); see also NSR's comments where they note, "The Meridian Speedway is the most efficient link for shippers who need to move traffic through the major population centers in the Southeast and Southwest... Compared to the next-shortest available route, the Meridian Speedway saves 184 miles between Atlanta and Dallas, 212 miles between Charlotte and Dallas, and 41 miles between Jacksonville and Dallas." Finance Docket No. 36500, Comments of Norfolk Southern Railway Company and Request for Conditions (NS-9), at 15 (Feb. 28, 2022).

intermodal growth plan train service map shows nearly all their intermodal traffic is expected to move to, from, or over Shreveport.⁹

APPENDIX G: GROWTH PLAN TRAIN SERVICE



Operating Plan, Appendix G, page 1

⁹ AOP, Appendix G at 1.

And Applicants have mapped the heavy density of traffic on the line between Shreveport and Meridian.¹⁰

EXHIBIT 14: TRAFFIC DENSITY
KCS Growth Plan Year 3



Prior to 2006, two carriers could carry transcontinental intermodal traffic over the Speedway. Under a 2000 agreement, KCS granted haulage to NSR to carry intermodal traffic between Meridian and Dallas for interchange with BNSF.¹¹ In addition, prior to 2006, KCS (as the owner of the entire Speedway) could carry any traffic over the Speedway, could interchange

¹⁰ AOP, Exhibit 14 at 17.

¹¹ KCSR-HC-00027738, “NSR-KCS Haulage Agreement,” (May 21, 2000).

with any connecting carrier, and could grant haulage over the Speedway to other carriers in competition with KCS.

Under the 2006 Exclusivity Arrangements, however, {{[REDACTED]}} intermodal traffic traveling overhead on the MSLLC Line can be carried only in the account of NSR (with KCS providing haulage) or by KCS in interchange with NSR at Meridian on terms requiring NSR's consent.¹² Specifically, {{[REDACTED]}} of revenue moves of such traffic falls into two categories. For intermodal overhead traffic with a domestic origin or destination west of Fort Worth other than on the KCS network ("NSR Exclusivity Traffic"), NSR has the exclusive right to carry that traffic in its account.¹³ For intermodal overhead traffic with a domestic origin or destination at or west of the Dallas-Fort Worth region and a lift or drop at KCS's intermodal terminal at Wylie, TX ("Dallas Intermodal Terminal Traffic"), NSR has a right of first refusal to carry that traffic in interchange with KCS in its account to and from points east of Meridian.¹⁴

II. APPLICANTS' AMENDED OPERATING PLAN PROJECT A 36% INCREASE IN TRAFFIC UNDER NSR's EXCLUSIVE CONTROL

One of the primary benefits Applicants claim for the Proposed Transaction is traffic growth, including growth over the MSLLC Line.^{15, 16} The Applicants' OOP and AOP, as well as

¹² See generally STB Finance Docket No. 34822, *The Kansas City Southern Ry. Co., and Meridian Speedway, LLC- Exemption for Transactions Within a Corporate Family*, Verified Notice of Exemption (served January 18, 2006); *Id.* at 114, 153, 182, 188, 264.

¹³ See CSXT-8 at 10, n. 22. Over the MSLLC Line, this traffic can only be moved by the MSLLC, operated by KCS, hauling it on behalf of NSR. Over the western portion of the Speedway, this traffic can only be moved in the account of NSR via haulage provided by KCS.

¹⁴ See FD 34822, Verified Notice of Exemption, Exhibit J, "Dallas Terminal Marketing Agreement," Section 2.(d) at 4.

¹⁵ It is not clear whether Applicants' claimed benefits are in fact public or private. See CSXT-8, Exhibit A: Verified Statement of Professor Julie M. Carey and Dr. Albert W. Bremser, at 25-31.

¹⁶ {{[REDACTED]}}

NSR's Comments and Responsive Application all project a significant increase in that traffic, {{[REDACTED]}} of which would be subject to NSR's exclusive control. One of the principal differences between the AOP and the OOP is that the AOP projects substantially higher growth between Shreveport and Meridian.¹⁷ Neither the OOP nor the AOP projects the expected density increase for each type of traffic moving between Shreveport and Meridian — only the total increase in density for each segment of the MSLLC Line. However, as explained below, the Board can reasonably infer that {{[REDACTED]}} of the increase Applicants project would consist of intermodal traffic,¹⁸ {{[REDACTED]}} of which will be either NSR Exclusivity Traffic or Dallas Intermodal Terminal Traffic.¹⁹

Applicants appear to expect substantial growth in the traffic controlled by NSR. Applicants' AOP divides the MSLLC Line into seven segments. The segment with the least gtm/mile indicates how much additional traffic Applicants could move across the entire route from Meridian to Shreveport, and from that volume the Board can infer the expected growth in NSR controlled traffic. The OOP projects the base density of the MSLLC Line segment with the least gtm/mile (also Meridian to Newton) will increase about 8.5 gtm/mile over 3 years, or roughly 30% (8.5/37.04). The AOP projects the base density of the segment with the least projected gtm/mile (Meridian to Newton) will increase about 9.5 gtm/mi, or roughly 36%

{{[REDACTED]}}

¹⁷ See *infra* notes 20-23.

¹⁸ {{[REDACTED]}}

¹⁹ See *supra* note 6.

(9.5/26.59), in three years.

OOP			AOP		
Base ²⁰	3-year ²¹	Projected Growth	Base ²²	3-year ²³	Projected Growth
28.54	37.04	+8.5 or +30%	26.59	36.09	+9.5 or +36%

The percentage density increase projected for traffic that moves over the entire MSLLC Line by the AOP (36%) is 20% greater than that projected by the OOP (30%). If the NSR Exclusivity Traffic and the Dallas Intermodal Traffic, which is { [REDACTED] } of the traffic moving over the entire MSLLC Line today, grows by the same percentage as the other traffic moving over the entire MSLLC Line, it would grow up to 36%.²⁴ That would mean an increase of roughly { [REDACTED] [REDACTED] }.²⁵

III. APPLICANTS' AMENDED OPERATING PLAN SHOWS CONDITIONS ARE REQUIRED TO ASSURE THE PROPOSED TRANSACTION WILL NOT PERPETUATE AND EXACERBATE THE HARM BEING DONE TO THE PUBLIC INTEREST BY THE KCS-NSR EXCLUSIVITY ARRANGEMENTS

As described in CSXT's Comments, NSR's exclusive control of more than { [REDACTED] } of

²⁰ OOP Exhibit 14, "Segment Newton, MS - Meridian, MS" in "KCS Year 2019, Average Tons per Mile of Road (000)" at 37 (Vol. 2 at 498) (served October 29, 2021).

²¹ OOP Exhibit 14, "Segment Newton, MS - Meridian, MS" in "KCS Year 2019, Average Tons per Mile of Road (000)" at 39 (Vol. 2 at 500) (served October 29, 2021).

²² AOP Amended Exhibit 14, "Segment Newton, MS - Meridian, MS" in "KCS Base Plan Year 2019, Average Tons per Mile of Road (000)" at 51 (served May 13, 2022).

²³ Resubmitted Workpapers, "24.1.1.9- Trains per day and Gross Ton Miles," row 281, column BI (served May 13, 2022). *See also* AOP at 81; Resubmitted Workpapers, "24.1.1.3.18- Comparison of Meridian Speedway Segment Densities" (served May 13, 2022) (Applicants' instructions for comparing AOP and OOP).

²⁴ This estimate of the growth of NSR-controlled traffic may be artificially low. NS's reports growth in that traffic may have been as high as { [REDACTED] [REDACTED] }.

²⁵ { [REDACTED] [REDACTED] [REDACTED] }.

the through traffic moving over the MSLLC Line/Speedway has been harming the public interest since 2006. Applicants' AOP projects that the Proposed Transaction will result in a substantial increase in NSR Exclusivity Traffic, which would greatly exacerbate that harm.

For traffic moving via the MSLLC Line between points west of Shreveport and points east of Meridian, however, neither Shreveport nor Meridian meet Applicants' definition of an "affected gateway" that Applicants will commit to keep open to prevent harms to the public interest.²⁶ In fact, Applicants *cannot* legally make such a commitment; it would be precluded by NSR's unlawful control over MSLLC²⁷ and the Exclusivity Arrangements. Only Board intervention can open these gateways on commercially reasonable terms and protect the public interest.

In both their Application and public comments made after the February 28 deadline for initial comments on the Application, Applicants have touted the benefits expected to accrue from traffic they project will flow over the MSLLC line.²⁸ But neither Applicants nor NSR should be able to secure those benefits to the extent they depend on unlawful arrangements that keep the MSLLC Line closed to competition with NSR, or to the extent they will deliver more traffic to NSR's exclusive control. Nor should Applicants be constrained by the Exclusivity Arrangements from realizing the increased efficiency and competitive opportunities they project from the Proposed Transaction.

Rather than reducing competitive concerns regarding the Meridian Speedway, the AOP amplifies the need for the Board to protect the public interest in competition by requiring open

²⁶ Mr. Brooks testified that "affected" traffic meant "Traffic that will -- CP will be able to provide a longer-line haul or a single-line haul as a result of the transaction." (Brooks Deposition, 94:5-7).

²⁷ See CSXT-8 at 8-9 n. 23.

²⁸ See *supra* notes 15-16.

gateways at both ends of the MSLLC Line for traffic to and from the Eastern United States.

Those gateways can only be opened if the Board adopts CSXT's proposed Meridian Speedway conditions, including the abrogation of the Exclusivity Arrangements.

Respectfully Submitted,

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Dated: June 9, 2022

CERTIFICATE OF SERVICE

I certify that I have caused the foregoing CSX Transportation, Inc. Amended Comments and Request for Conditions to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Thomas McCarthy, and all parties of record in this proceeding.

/s/ Paul A. Cunningham

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Dated: June 9, 2022