

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36500 AND
FD 36500 SUB-NO.5

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. MOTION TO COMPEL THE
APPEARANCE AND TESTIMONY OF MICHAEL R.
MCCLELLAN AT A VIDEO DEPOSITION ON JUNE 29, 30, OR JULY 1, 2022**

EXPEDITED HANDLING REQUESTED

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Dated: June 21, 2022

BEFORE THE
SURFACE TRANSPORTATION
BOARD

DOCKET NO. FD 36500 AND
FD 36500 SUB-NO.5

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 MOTION TO COMPEL THE
APPEARANCE AND TESTIMONY OF MICHAEL R.
MCCLELLAN AT A VIDEO DEPOSITION ON JUNE 29, 30, OR JULY 1, 2022**

CSX Transportation, Inc. (“CSXT”) moves to compel the appearance and testimony of Michael R. McClellan, Sr. Senior Vice President and Chief Strategy Officer at Norfolk Southern Corporation¹ at a video deposition to be held June 29, 30, or July 1, 2022, at NS’s discretion.

This motion is necessary because, after *months* of delay at NS’s request, NS has abruptly informed CSXT that its witness will not be available to be deposed for the next month – not until *after the parties’ next submissions are due in this proceeding, July 12*. CSXT originally noticed a corporate deposition regarding the Meridian Speedway (the focus of both CSXT’s and NS’s February 28, 2022 comments) in March, for which NS has long indicated and has since confirmed Mr. McClellan would be the witness. But NS proposed that CSXT wait to depose him

¹ Norfolk Southern Corporation (“NSC”) and Norfolk Southern Railway (“NSR”) are referred to herein interchangeably as NS.

until after NS had submitted its amended comments and responsive application, on June 9.² CSXT agreed. CSXT attempted in advance of that filing to schedule a deposition promptly thereafter but was told even the scheduling discussion would have to wait. Then, beginning June 10, CSXT's requests to discuss scheduling were met with one delay until, on June 17, NS informed CSXT that as of that day, Mr. McClellan would not be available for deposition before July 21. Again, CSXT's next filings on these matters are due July 12.

Given the procedural status of the Application,³ the Board, CSXT, and other interested parties must have access to information which NS's counsel reports can only be provided by Mr. McClellan to best respond to the comments⁴ and responsive application⁵ that NS submitted on February 28, and amended and refiled on June 9, 2022. NS's counsel reports Mr. McClellan is uniquely positioned to be deposed as NS's corporate representative regarding the information pertaining to NS's participation in the formation and operation of the Meridian Speedway LLC ("MSLLC"), the transportation in which it participates over MSLLC's portion of the Meridian Speedway between Shreveport, LA and Meridian, MS, and over the portion of the Meridian Speedway owned by the Kansas City Railway Company ("KCS") between Dallas, TX and Shreveport, to and from points in the eastern U.S. This information is highly relevant to CSXT's response to NS's submissions. Given the schedule that requires a response to those submissions

² Finance Docket No. 36500, Amended Comments of Norfolk Southern Railway Company and Request for Conditions (NS-12), (June 9, 2022). Hereafter "NS's Amended Comments and Conditions"; Finance Docket No. 36500, Amended Responsive Application of Norfolk Southern Railway Company (NS-13) (June 9, 2022). Hereafter "NS's Amended Responsive Application."

³ *Canadian Pacific Ry. Co. – Control – Kansas City Southern*, Finance Docket No. 36500, Railroad Control Application (CP-26/KCS-14), (October 29, 2021), as Amended May 13, 2022.

⁴ Finance Docket No. 36500, Comments of Norfolk Southern Railway Company and Request for Conditions (NS-9), (February 28, 2022). Hereafter "NS's Original Comments and Conditions."

⁵ Finance Docket No. 36500, Responsive Application of Norfolk Southern Railway Company (NS-8) (Feb. 28, 2022). Hereafter "NS's Original Responsive Application."

by July 12, 2022,⁶ and NS's delays to date (detailed below), CSXT requests an expedited response to this Motion to Compel by June 27 and that Your Honor Order that Mr. McClellan appear by video and testify June 29, June 30, or July 1, 2022.

Procedural Context

NS's Original Comments and Conditions on the Proposed CPKC Transaction and NS's Original Responsive Application filed in February identify the significance of the impact of the Proposed CPKC Transaction on the Meridian Speedway and seek additional rights over the Meridian Speedway. One of CSXT's requested conditions in its Original Comments and Request for Conditions from February,⁷ was to abrogate NS's exclusive rights over the Meridian Speedway. CSXT argued that the exclusive rights granted to NS in the series of 2006 agreements and subsequent amendments, the "Meridian Speedway Arrangements," were anticompetitive, were not approved by the Surface Transportation Board, and that neither the Proposed Transaction nor NS's Responsive Application should be approved without remedying those deficiencies, thereby precluding their enshrinement and even greater harm to the public interest.

To aid in CSXT's responding to NS's Original Comments and Conditions and NS's Original Responsive Application, which according to the then-governing schedule were due by April 22, 2022,⁸ CSXT propounded Discovery Requests to NS on March 22, 2022⁹ and that same day noticed the deposition of "an officer or officers designated by the Norfolk Southern Railway Company ("NS") who has complete knowledge of all aspects of the Meridian Speedway relationship between Kansas City Southern Railway and NS, including but not limited to the

⁶ See Finance Docket No. 36500, Decision No. 17, (served April 27, 2022).

⁷ Finance Docket No. 36500, CSX Transportation Inc.'s Comments and Request for Conditions (CSXT-8) (February 28, 2022). Hereafter "CSXT's Original Comments and Conditions"

⁸ See Finance Docket No. 36500, Decision No. 11, (served November 23, 2021).

⁹ See Exhibit A.

formation of the Meridian Speedway LLC, the maintenance, marketing, and operations of the Meridian Speedway, and the negotiation of pricing for movements over the Meridian Speedway” for March 29, 2022.¹⁰

However, on March 16, 2022, the Board suspended the schedule and the date for CSXT’s response to NS’s submissions was delayed for an unspecified period of time.¹¹ Therefore, in meet and confer discussions on March 24, 2022, NS suggested, and CSXT agreed, that its responses to the Interrogatories and Requests for Admission would await the deposition of NS’s witness following the anticipated refiling of NS’s amended Comments and Responsive Application. NS stated that that witness was “90 percent certain” to be Michael R. McClellan, who provided a verified statement in support of NS’s initial Comments and Responsive Application. NS answered each of CSXT’s Interrogatories and Requests for Admission with a single sentence: “Consistent with the parties’ meet and confer discussions, NS will defer response to this [interrogatory/ request] pending the party deposition CSX has requested of NS.” See NS’s response from April 6, 2022, at 11-21.¹²

On April 27, 2022, the STB issued Decision No. 17¹³ setting forth a revised schedule calling for Applicants to file an amended application by May 27, 2022, revised comments and responsive applications to be filed within 20 days after the amended application filing, and responses to such comments and responsive applications within 60 days after the amended

¹⁰ See Exhibit B

¹¹ Finance Docket No. 36500, Decision No. 16 (served March 16, 2022).

¹² See Exhibit C. CSXT and NS did, however, agree to begin document production in response to document requests. To date, CSXT has made three such productions of over 600 documents and NS has made two productions with fewer than 200 non-repetitive documents. CSXT expects to complete its production no later than June 27, 2022. NS, which has not produced documents since May 25, 2022, has not indicated when its production will be completed.

¹³ Decision No. 17, (served April 27, 2022).

application filing. On May 13, 2022, Applicants submitted their amendments to their Application.¹⁴ Following an additional week extension for revised comments and responsive applications,¹⁵ NS submitted an amended responsive application¹⁶ and amended comments and request for conditions¹⁷ on June 9, 2022. However, because the date to respond to revised comments and applications has not changed, CSXT must still submit comments on NS's Amended Responsive Application and NS's Amended Comments and Conditions on July 12, 2022.

Anticipating the tight schedule for the CSXT response to any amended pleadings, Neill Kling of Harkins Cunningham called Daniel Bouquet on Monday, June 6, 2022, to schedule the NS deposition originally Noticed March 22 for shortly after the amended filings. Mr. Kling was told that NS was “not sure” that the deponent would be Mr. McClellan, but in any event NS counsel was in no position to schedule depositions until after the amended filings on June 9, 2022. Mr. Kling agreed to wait until after that date to inquire further about the CSXT Notice, and called Mr. Bouquet again on Friday, June 10, 2022, to inquire about dates the week of June 21, 2022. Mr. Bouquet stated that he would be discussing the matter with NS that afternoon, and that he would provide Mr. Kling with a schedule of available dates “early next week.” Mr. Kling emphasized the importance of having an answer by close of business on Monday, June 13, 2022. Mr. Baquet made no mention that Mr. McClellan would not be available at any time.

¹⁴ Finance Docket No. 36500, Amended Operating Plan CP-47/KCS-34, (Served May 13, 2022).

¹⁵ See Finance Docket No. 36500, Decision No. 18, (served May 27, 2022).

¹⁶ Finance Docket No. 36500, Amended Responsive Application of Norfolk Southern Railway Company, (served June 9, 2022). Hereafter “NS’s Amended Responsive Application.”

¹⁷ Finance Docket No. 36500, Amended Comments of Norfolk Southern Railway Company and Request for Conditions, (served June 9, 2022). Hereafter “NS’s Amended Comments and Conditions.”

At 1:35 that afternoon, Mr. Bouquet e-mailed Mr. Kling and stated that NS “would be in touch next week with potential dates for the party deposition on Norfolk Southern” and asked for the availability of CSX witnesses in response to NS requests for depositions (served on April 1, 2022)¹⁸ that would occur June 27, 2022. Mr. Kling responded at 1:51 PM stating that CSXT would check dates and reply to that request but emphasized the importance of receiving a response to CSXT’s request by close of business on Monday, June 13, 2022.¹⁹

Mr. Kling reached out to Mr. Baquet at 1:02 pm on June 13, 2022, to discuss deposition dates for NS’s and CSXT’s witnesses. Mr. Baquet then e-mailed Mr. Kling at 2:26 pm stating, for the first time, that he was out of the office through Thursday, June 16, 2022, and that Mr. Kling should call Carrie Mahan.²⁰ Mr. Kling then immediately called Ms. Mahan, left a voicemail, and received an e-mail from her that she too was out of the office, “will not be able to comply with your proposed deadline,” and would respond “within the next several days.” Ms. Mahan further stated that “any witnesses that NS will put up for deposition will not be available next week.”²¹ The parties scheduled a conference call to discuss the depositions and pending responses for Friday, June 17, 2022, at 1 p.m. CSXT filed an Amended Notice of Deposition to NS on Thursday, June 16, 2022, at 6 p.m. for a deposition to be held on June 22, 2022 (absent other mutually acceptable arrangements).²²

On June 17, Mr. Cunningham spoke with Ms. Mahan prior to the planned meet and confer. She reported, for the first time, that Mr. McClellan, whom NS had identified as the only person knowledgeable about the matters that were the subject of CSXT’s deposition notice, was

¹⁸ See Exhibit D

¹⁹ See Exhibit E

²⁰ See Exhibit E

²¹ See Exhibit E

²² See Exhibit F

on vacation starting that day, June 17. Ms. Mahan stated Mr. McClellan would not be available for a virtual deposition the week of June 27 and could not be made available before July 21 at the earliest. She reported that this vacation had been scheduled for months and that she and the rest of the NS legal team had not been aware of Mr. McClellan's plans until recently. Ms. Mahan also said she would have responses to certain discovery requests on June 20, 2022. Mr. Cunningham agreed to delay the scheduled meet and confer, and speak again on Monday, June 20. When Mr. Cunningham spoke to Ms. Mahan on June 20, Ms. Mahan reported that NS would not produce Mr. McClellan (or any other designee) before July 22, 2022, and that NS would also not respond to CSXTs March 22, 2022, Interrogatories and Requests for Admission on the theory that CSXT also had discovery pending to Applicants on a similar subject. CSXT therefore will move to compel responses to outstanding discovery requests in the event the meet and confer (scheduled for tomorrow, June 22, 2022) is unsuccessful.

NS, having asked to delay the deposition of Mr. McClellan, and having also delayed its answers to the interrogatories and requests for admission *pending* that deposition, cannot be permitted to abruptly inform CSXT that the Mr. McClellan's vacation takes precedence over CSXT's uncontested need for his testimony. Mr. McClellan should be compelled to appear by video for deposition by CSXT as requested above.

Respectfully Submitted,

/S/ Paul A. Cunningham

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Attorneys for CSX Transportation, Inc.

Dated: June 21, 2022

CERTIFICATE OF SERVICE

I certify that I have caused the foregoing CSX Transportation, Inc. Motion to Compel Deposition 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

Paul A. Cunningham
*Attorney for CSX
Transportation, Inc.*

Dated: June 21, 2022

EXHIBIT

A

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

CSX TRANSPORTATION, INC. FIRST SET OF DISCOVERY REQUESTS
TO NORFOLK SOUTHERN RAILWAY COMPANY

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Attorneys for CSX Transportation, Inc.

Dated: March 22, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

CSX TRANSPORTATION, INC. FIRST SET OF DISCOVERY REQUESTS
TO NORFOLK SOUTHERN RAILWAY COMPANY

Pursuant to 49 C.F.R. §§ 1114.21-.31, CSX Transportation Inc. (“CSXT”) requests that Norfolk Southern (as defined below) respond to the following discovery requests in accordance with the Surface Transportation Board’s (the “STB”) rules, and the Definitions and Instructions set forth below. Except as otherwise specified, these requests are for materials:

- a) maintained as an original or copy in digital form;
- b) that were produced in, are regarding, or (in the case of internal, industry, or governmental rules, agreements, regulations, or laws) are applicable to the years 2018, 2019, 2020, or the last pertinent period of the year 2021; and
- c) readily provided upon request or accessible to senior management of any organizational subdivision of NS.

Pursuant to 49 C.F.R. §§ 1114.26(a), 1114.30(b), and 1114.27(a) responses to the requests below should be served no later than fifteen (15) days from the date of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. “NS” means Norfolk Southern Railway Company and The Alabama Great Southern Railroad Company (“AGS”), the subsidiary of NS that is the official member of the Meridian Speedway, LLC, individually and collectively, and their predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.

2. "Canadian Pacific" or "CP" refers to Canadian Pacific Railway Limited; Canadian Pacific Railway Company; Central Maine & Quebec Railway US Inc.; Dakota, Minnesota & Eastern Railroad Corporation; Delaware and Hudson Railway Company, Inc.; and Soo Line Railroad Company, including their predecessors, divisions, affiliates, and subsidiaries, whether individually or collectively, and to their past, present, or expected post-Transaction employees, board of directors, members of the board of directors, and other persons acting or purporting to act on behalf of the foregoing.
3. "Kansas City Southern" or "KCS" refers to Kansas City Southern, Gateway Eastern Railway Company, The Kansas City Southern Railway Company, The Texas Mexican Railway Company, and Kansas City Southern de México, including their predecessors, divisions, affiliates, and subsidiaries, whether individually or collectively, and to their past, present, or expected post-Transaction employees, board of directors, members of the board of directors, and other persons acting or purporting to act on behalf of the foregoing.
4. "Canadian National" or "CN" refers to the Canadian National Railway Company, the Illinois Central Railroad Company, the Grand Truck Corporation, and CN's Rail Operating Subsidiaries, including their predecessors, divisions, affiliates, and subsidiaries, whether individually or collectively, and their predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.
5. "The Transaction" or "Transaction" refers to the proposed combination that is the subject of STB Docket Number FD 36500 pursuant to which CP would acquire and exercise control of KCS.
6. "Meridian Speedway LLC" means the joint venture controlled by KCS and the AGS which is the subject of STB Docket Numbers FD 34821, 34822, and 34823.
7. "Meridian Speedway Agreements" refers to the agreements, as they currently prevail, of which public, redacted forms were appended to the Verified Notice of Exemption filed by KCS and Meridian Speedway LLC on January 17, 2006 in STB Finance Docket No. 34822. These include but are not limited to the currently prevailing versions of:
 - a. Transaction Agreement by and Among Kansas City Southern, the Kansas City Southern Railway Company, Norfolk Southern Corporation, and the Alabama Great Southern Railroad Company Dated as of December 1, 2005 (appended as Agreements Exhibit 2 to Notice of Exemption)
 - b. Limited Liability Company Agreement of Meridian Speedway, LLC (appended as Exhibit A to Transaction Agreement)
 - c. Meridian Speedway LLC – Kansas City Southern Operating Agreement (appended as Exhibit B to Transaction Agreement)
 - d. Norfolk Southern Railway Company – Meridian Speedway LLC Joint Use Agreement (appended as Exhibit C to Transaction Agreement)
 - e. The Kansas City Southern Railway Company – Meridian Speedway LLC Joint Use

- Agreement (appended as Exhibit D to Transaction Agreement)
- f. Norfolk Southern Railway Company – The Kansas City Southern Railway Company Western Haulage Agreement (appended as Exhibit E to Transaction Agreement)
 - g. KCS MSLLC Master Interchange Agreement (appended as Exhibit F to Transaction Agreement)
 - h. Dallas Terminal Marketing Agreement (appended as Exhibit J to Transaction Agreement)
8. “NS Traffic” is as the term is defined in the Meridian Speedway Agreements. To the extent the agreements comprising the Meridian Speedway Agreements differ in their definition of the term in a way relevant to your response to a discovery Request, please respond to the Request by applying to the definition or definitions applicable to the subject matter of the Request.
9. The “Meridian Speedway” is comprised of the line between Shreveport, LA and Meridian, MS owned and operated by Meridian Speedway LLC.
10. The “Dallas-Shreveport Segment” comprises the segment of track between the Dallas Intermodal Terminal and the Shreveport, LA point on the Meridian Speedway.
11. The “Dallas Intermodal Terminal” is as the term is defined in the Meridian Speedway Agreements. To the extent the agreements comprising the Meridian Speedway Agreements differ in their definition of the term in a way relevant to your response to a discovery Request, please respond to the Request by applying to the definition or definitions applicable to the subject matter of the Request.
12. “Dallas Intermodal Terminal Traffic” is as the term is defined in the Meridian Speedway Agreements. To the extent the agreements comprising the Meridian Speedway Agreements differ in their definition of the term in a way relevant to your response to a discovery Request, please respond to the Request by applying to the definition or definitions applicable to the subject matter of the Request.
13. The “Dallas Option” shall have the meaning of the “Option,” as that term is described in the Dallas Terminal Marketing Agreement and otherwise referred to in the Meridian Speedway Agreements. To the extent the agreements comprising the Meridian Speedway Agreements differ in their definition of the term in a way relevant to your response to a discovery Request, please respond to the Request by applying to the definition or definitions applicable to the subject matter of the Request.
14. “NS Responsive Application” refers to the Responsive Application of Norfolk Southern Railway Company filed February 28, 2022, in STB Finance Docket 36500 (Sub-No. 5).
15. “Document” means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including but not limited to intra-company communications, correspondence, telegrams, memoranda, contracts, instruments, studies, projections, forecasts, summaries or records of conversations or interviews, minutes or records of conferences or meetings, records or reports of negotiations, diaries, calendars, photographs, maps, tape recordings, computer tapes, computer disks, other computer storage devices, computer programs, computer printouts, models, statistical statements, graphs,

charts, diagrams, plans drawings, brochures, pamphlets, advertisements, circulars, trade letters, press releases, invoices, receipts, financial statements, accounting records, worksheets, drafts, revisions of drafts, and original or preliminary notes. Further, the term “document” includes

- a. Both basic records and summaries of such records (including computer runs);
 - b. Both original versions and copies that differ in any respect from original versions; and
 - c. Both documents in the possession, custody, or control of NS and documents in the possession, custody or control of consultants or others who have assisted NS in the creation of those documents.
16. “Description” shall mean a statement or account giving the characteristics of something.
17. “Any” shall be construed as “all” and vice versa, as necessary to bring within the scope of the Request all information that might otherwise be construed to be outside of its scope.
18. “Including” shall be construed to mean “including but not limited to.”
19. The use of the singular shall be deemed to include the plural, as appropriate in context.
20. Discovery responses should be supplemented when a supplemental response is required pursuant to 49 C.F.R. § 1114.29.
21. References to railroads, shippers, consultants, or companies include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents, and representatives thereof.
22. All uses of the conjunctive include disjunctive and vice versa. Words in the singular include the plural and vice versa.
23. To the extent materials called for herein are confidential, CSX Transportation, Inc. (“CSXT”) will protect them from disclosure to third parties in accord with the Protective Order entered in this proceeding and will solely use those materials for the purposes of this proceeding, and not for any other business, commercial, or other competitive purposes. CSXT will cooperate with counsel for NS to identify information that would warrant a confidential or highly confidential designation.
24. NS may contact Mr. Paul Cunningham, undersigned counsel for CSXT, to discuss any questions regarding these requests.

DOCUMENT REQUESTS

- 1) With respect to traffic movements both to and from Kansas City via 1) NSR’s route between Kansas City and East St. Louis; and 2) KCS’s line between Kansas City and East St. Louis, please identify and produce:

- a) All business reports, plans, forecasts, and analyses assessing, reflecting, or representing the present state of such traffic movements; by cars, tons, origin and destination stations, commodity, car and traffic type;
 - b) All business reports, plans, forecasts, and analyses assessing, reflecting, or representing the future state of these traffic movements in the event that the transaction between CP and KCS is completed;
 - c) All documents reflecting any changes NS has considered, or plans, to service involving movements over NS's route between Kansas City and East St. Louis in the event the transaction between CP and KCS is completed;
 - d) All business reports, plans, forecasts, and analyses assessing, reflecting, or representing the future state of these traffic movements in the event that the Canadian National Railway Company's Responsive Application is granted by the STB; and
 - e) All documents reflecting any changes NS has considered, or plans, to service involving movements over NS's route between Kansas City and East St. Louis in the event that the Canadian National Railway Company's Responsive Application is granted by the STB.
- 2) Please identify and produce documents sufficient to show NS's expectations regarding changes the merged CPKC may make regarding the interchange of traffic with NS at New Orleans, and any strategic or commercial responses NS has considered, or plans, to such expected changes, including but not limited to all business reports, plans, forecasts, and analyses assessing, reflecting, or representing such expectations and responses.
 - 3) Please identify and produce, in unredacted form, all agreements and amendments that relate to the formation, governance, or operation of the Meridian Speedway LLC and NS's operations over the Meridian Speedway.
 - 4) Please identify and produce, in unredacted form, all filings with the Surface Transportation Board in Docket Numbers FD 34821, FD 34822, and FD 34823, including but not limited to:
 - a) All exhibits, appendices, or workpapers thereto in support of the Verified Notice of Exemption filed on January 17, 2006, in STB FD 34821.
 - b) All exhibits, appendices, or workpapers thereto in support of the Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(3) filed on January 17, 2006, in STB FD 34822.
 - c) All exhibits, appendices, or workpapers thereto in support of the Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(7) filed on January 17, 2006, in STB FD 34823.
 - 5) Please identify and produce documents sufficient to show the timing, extent, and specific nature of NS's investments in the physical infrastructure of the Meridian Speedway (including but not limited to allotments of NS's purchase price for an interest in Meridian Speedway LLC spent to upgrade the Meridian Speedway and other NS funds used to upgrade the line) and the actual or anticipated effects of such investments on performance metrics on the Meridian Speedway, including but not limited to the capacity of the Meridian Speedway, the speed of trains running on the Meridian Speedway, and any measure of increased or decreased

throughput of trains on the Meridian Speedway.

- 6) Please identify and produce documents sufficient to show the nature and extent of NS's marketing and sale of intermodal transportation services via the Meridian Speedway, including but not limited to business reports, plans, forecasts, projections, and analyses assessing, reflecting, or representing such activities.
- 7) Please identify and produce documents sufficient to show the actual or anticipated competitive benefits and advantages to NS of its exclusive ability to transport over the Meridian Speedway all overhead intermodal traffic originating or terminating west of Dallas and east of Meridian, and not originating or terminating on KCSR, including but not limited to business reports, plans, forecasts, and analyses assessing, reflecting, or representing such competitive benefits.
- 8) Please identify and produce documents sufficient to show NS's expectations regarding the incentives of a merged CPKC to divert traffic currently served by NS over the Meridian Speedway to other CPKC routes and interchanges with NS or with any other railroad.
- 9) Please identify and produce documents sufficient to show:
 - a) NS's historical traffic volumes (cars, tons) over the Meridian Speedway by origin and destination stations, commodity, route, car type;
 - b) NS's historical revenue, rates, routes, and revenue divisions for traffic carried over the Meridian Speedway;
 - c) NS's historical haulage fees over the Meridian Speedway paid per car, container, or trailer by origin and destination stations, commodity, route, car type;
 - d) Any NS's business forecast for future traffic volumes, revenues, rates, routes, and divisions over the Meridian Speedway, including with and without the proposed CP and KCS transaction; and
 - e) All workpapers and source data, in native file format, created for the Verified Statement of Michael R. McClellan filed as Exhibit B to the Comments filed by NS on February 28, 2022, including but not limited to the workpapers pertaining to the figures cited in Section II. And Section III.
- 10) Please identify and produce documents sufficient to show:
 - a) Any actions NS has considered or planned regarding the exercise of its option to purchase the Wylie Intermodal Terminal;
 - b) NS's plans to market service to, from, or through the Wylie Intermodal Terminal after any anticipated purchase by NS of the Wylie Intermodal Terminal; and
 - c) NS's plans to market service involving interchange of traffic between NS and BNSF at Metro Junction, Texas, or service otherwise moving through the Dallas area.
- 11) Please identify and produce all documents that NS contends support the claim that NS's Responsive Application in this proceeding is related to the CP/KCS transaction that is the

subject of the proceeding.

- 12) Please identify and produce all documents, not otherwise provided to the STB, that NS contends support any of the claims that NS has made in its Responsive Application.
- 13) Please identify and produce all information and documents that NS produces in response to discovery requests submitted by other participants in this proceeding.
- 14) Please identify and produce all workpapers submitted to the Surface Transportation Board with or in support of any filings related to this proceeding.

INTERROGATORIES

- 1) If any of the documents requested by CSXT above do not provide a full response to the referenced issue, please instead offer a more complete description, with reference to the Document Request to which the description is responsive.
- 2) If NS were to exercise the Dallas Option and NS were to be granted the trackage rights sought in the NS Responsive Application, would KCS have the right to transport so-called “NS Traffic,” as it is defined in the Meridian Speedway Agreements, over the Dallas-Shreveport Segment, other than as haulage for NS?
- 3) If NS were to exercise the Dallas Option and NS were to be granted the trackage rights sought in the NS Responsive Application, would KCS be able to perform any agreement to interchange at Meridian with any non-NS railroad any so-called “NS Traffic,” as it is defined in the Meridian Speedway agreements, that would involve KCS’s transportation of said “NS Traffic” over the Dallas-Shreveport Segment, other than as haulage for NS?
- 4) Does KCS have the right to transport intermodal traffic over the Meridian Speedway where the origin or destination of that traffic is on the KCSR system (as it existed at the time of the Meridian Speedway Agreements)?
 - a. If so, how much of such traffic did KCS transport in 2021?
- 5) Does KCS have the right to transport intermodal traffic over the Meridian Speedway where the origin or destination of that traffic is in Mexico? How much of such traffic did KCS transport in 2021?
- 6) Where “Dallas Intermodal Terminal Traffic,” as it is defined in the Meridian Speedway Agreements, also constitutes “NS Traffic,” as it is defined in the Meridian Speedway Agreements, if NS declines its right to participate in movement of that traffic (under the Dallas Terminal Marketing Agreement § 2(d) and/or any other applicable agreement(s)), does KCS have the right to transport such traffic over the Meridian Speedway other than as haulage by Meridian Speedway LLC, operated by KCS, for NS?
 - a. If KCS has such right, does such traffic constitute “KCSR Permitted Traffic,” as it is defined in the Kansas City Southern Railway Company – Meridian Speedway LLC Joint Use Agreement?

- 7) For the purposes of the definitions of “NS Traffic” and “Dallas Intermodal Terminal Traffic” as they are defined in the Meridian Speedway Agreements, do the words “originate” and “terminate” (and grammatical variations thereon) as applied to intermodal traffic including transport by truck refer to the “origin” and “destination” of the combined truck-and-rail movement? For clarity and by way of example, if a container is dispatched by truck from point A, transferred to rail at point B, transported by rail to and transferred to truck at point C, and delivered by truck to point D, does it “originate” at point A and “terminate” at point D for the purposes of this definition?
- 8) For the purposes of the definitions of “NS Traffic” and “Dallas Intermodal Terminal Traffic” as they are defined in the Meridian Speedway Agreements, do the words “originate” and “terminate” (and grammatical variations thereon) as applied to intermodal traffic including transport by ship refer to the “origin” and “destination” of the combined ship-and-rail movement? For clarity and by way of example, if a container is dispatched from point X by ship, shipped to and transferred to rail at port Y, and delivered by rail to point Z, does it “originate” at point X for the purposes of this definition?
- 9) Please identify all investments NS has made in the physical infrastructure of the Meridian Speedway since November 30, 2005, describing with particularity all physical changes made to the rail infrastructure in question related to such investments and the value of such investments.
- 10) For each investment identified in response to Interrogatory 9, please describe the investment’s anticipated effects and, if known, actual effects, on performance metrics on the Meridian Speedway, including but not limited to the capacity of the Meridian Speedway, the speed of trains running on the Meridian Speedway, and any measure of increased or decreased throughput of trains on the Meridian Speedway.

REQUESTS FOR ADMISSION

- 1) Admit or deny that, absent consent by NS, NS’s exclusive right to transport so-called “NS Traffic,” as it is defined in the Meridian Speedway Agreements, over the Meridian Speedway, remains effective indefinitely.
- 2) Admit or deny that KCS does not have the right to transport so-called “NS Traffic,” as it is defined in the Meridian Speedway Agreements, over the Meridian Speedway, other than as haulage by Meridian Speedway LLC, operated by KCS, for NS.
- 3) Admit or deny that, absent consent by NS, the restriction on KCS transportation of traffic referred to in Request for Admission 2 remains effective indefinitely.
- 4) Admit or deny that Meridian Speedway LLC does not have the right to transport so-called “NS Traffic,” as it is defined in the Meridian Speedway Agreements, over the Meridian Speedway, other than as haulage by Meridian Speedway LLC for NS.
- 5) Admit or deny that, absent consent by NS, the restriction on Meridian Speedway LLC transportation of traffic referred to in Request for Admission 4 remains effective indefinitely.

- 6) Admit or deny that KCS cannot agree to interchange at Meridian with any non-NS railroad any so-called “NS Traffic,” as it is defined in the Meridian Speedway Agreements, that would involve KCS’s transportation of said “NS Traffic” over the Meridian Speedway other than as haulage by Meridian Speedway LLC, operated by KCS, for NS.
- 7) Admit or deny that, absent consent by NS, the restriction on KCS’s ability to perform interchange agreements referred to in Request for Admission 6 remains effective indefinitely.
- 8) Admit or deny that Meridian Speedway LLC cannot perform any agreement to interchange at Meridian with any non-NS railroad any so-called “NS Traffic,” as it is defined in the Meridian Speedway Agreements, that would involve Meridian Speedway LLC’s transportation of said “NS Traffic” over the Meridian Speedway other than as haulage by Meridian Speedway LLC for NS.
- 9) Admit or deny that, absent consent by NS, the restriction on Meridian Speedway LLC’s ability to perform interchange agreements referred to in Request for Admission 8 remains effective indefinitely.
- 10) Admit or deny that so-called “NS Traffic,” as applicable to the responses to all of the foregoing Requests, includes all intermodal traffic that enters or exits the Meridian Speedway at Shreveport, LA, and enters or exits the Meridian Speedway at Meridian, MS, with domestic origins or destinations west of Dallas/Fort Worth (including west coast port traffic) other than on the KCSR system (as it existed at the time of the Meridian Speedway Agreements) and domestic origins or destinations at or east of Meridian, regardless of whether NS participates or appears in the movement of that traffic other than in its movement over the Meridian Speedway. To the extent the answer differs with respect to foregoing Requests, please explain the difference, describing with particularity what traffic does and does not constitute “NS Traffic” for the purposes of each Request.
- 11) Admit or deny that KCS cannot quote rates for intermodal traffic moving over the Meridian Speedway that originate or terminate west of Dallas, TX and terminate or originate east of Meridian, MS.
- 12) Admit or deny that KCS cannot handle intermodal traffic in its own account that moves over the Meridian Speedway and originates or terminates west of Dallas, TX and Meridian, MS.
- 13) Admit or deny that NS intends to interchange intermodal traffic with BNSF Railway Company at Metro, TX if the STB grants NS’s Responsive Application
- 14) Admit or deny that KCS is contractually prohibited from interchanging intermodal traffic with CSXT at Meridian, MS if that traffic originates or terminates east of Meridian and west of Dallas.
- 15) Admit or deny that NS filed an application with the STB under 49 U.S.C. § 11322 for authority to divide traffic with KCS moving over the Meridian Speedway.

Respectfully Submitted,

/S/ Paul A. Cunningham

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Attorneys for CSX Transportation, Inc.

Dated: March 22, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing CSX Transportation Inc. First Set of Discovery Requests to the Norfolk Southern Railway Company to be served electronically or by first-class mail, postagepre-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

Paul A. Cunningham
*Attorney for CSX
Transportation, Inc.*

March 22, 2022

EXHIBIT

B

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 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

NOTICE OF DEPOSITION FOR NORFOLK SOUTHERN RAILWAY COMPANY

Counsel for CSX Transportation, Inc., pursuant to 49 C.F.R. § 1114.22, will depose an officer or officers designated by the Norfolk Southern Railway Company (“NS”) who has complete knowledge of all aspects of the Meridian Speedway relationship between Kansas City Southern Railway and NS, including but not limited to the formation of the Meridian Speedway LLC, the maintenance, marketing, and operations of the Meridian Speedway, and the negotiation of pricing for movements over the Meridian Speedway. The deposition will commence on Tuesday, March 29, 2022, at 9:30 AM EST and continue until completed. The deposition will take place over videoconference.

Respectfully submitted this 22nd day of March, 2022.

/s/ Paul A. Cunningham

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*Attorneys for CSX Transportation,
Inc.*

Dated: March 22, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing CSX Transportation, Inc. Notice of Deposition for the Kansas City Railway Company to be served electronically or by first-class mail, postage pre-paid, on the 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
Paul A. Cunningham
*Attorney for CSX
Transportation, Inc.*

March 22, 2022

EXHIBIT

C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36500

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

**NORFOLK SOUTHERN RAILWAY COMPANY'S RESPONSES AND OBJECTIONS
TO CSX TRANSPORTATION, INC.'S FIRST SET OF DISCOVERY REQUESTS TO
NORFOLK SOUTHERN RAILWAY COMPANY**

Pursuant to 49 C.F.R. Part 114, Subpart B, Norfolk Southern Railway Company ("NS") hereby responds and objects as follows to CSX Transportation, Inc.'s First Set of Discovery Requests to Norfolk Southern Railway Company ("CSX's Requests") served on March 22, 2022.

PRELIMINARY STATEMENT

These Responses and Objections are based upon information presently known to NS. NS does not concede or agree that any response to CSX's Requests constitutes relevant information or admissible evidence and NS's response to CSX's Requests is neither an admission of relevance nor admissibility. NS reserves the right to amend, modify, or supplement these Responses and Objections, and therefore the absence of an objection to any request does not constitute a waiver of any general or specific objection or privilege.

NS expressly reserves the right to modify its Responses and Objections to exclude from its collection and production material rendered irrelevant in subject matter or date by any subsequent rulings of the Administrative Law Judge or the Surface Transportation Board (the "Board"). These Responses and Objections are also provided in advance of the collection and

processing of Documents and ESI. Accordingly, NS further reserves its rights to amend or supplement these Responses and Objections on grounds of burden and/or proportionality if and when more information is known about the burden of responding to a particular request.

A response that NS will produce information is not a representation that the information exists. Rather, it is a representation that if non-public and non-privileged documents and data described in the response exist and are located pursuant to a reasonable search of reasonably accessible document and data sources as those sources are maintained in the ordinary course of business, they will be produced. For the avoidance of doubt, NS objects to the assertion in CSX's Requests that they call for materials "readily provided upon request or accessible to senior management of any organizational subdivision of NS" as being overly broad and unduly burdensome. NS is not offering or promising to search for and produce every document or piece of information that may exist in its possession, custody or control, and/or search for all documents where they are not included within the results of a reasonable search as described above. NS will not search for, collect, or produce any documents or information that are: (1) not in its possession, custody or control; (2) a matter of public record; (3) equally available to Applicants; or (4) already in Applicants' possession, custody, or control.

NS will not produce information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities. In addition, NS will not produce documents prepared in connection with, or information relating to, possible settlement or mediation of this or any other proceeding. To the extent that any information or document protected from disclosure by applicable privilege or immunity is inadvertently provided or identified in response to a Request, that production is not to be construed as a waiver of the privilege or immunity.

Further, NS will not intentionally search for or produce any personally identifiable or other protected information related to NS or its employees, and/or information that is subject to other protective orders, non-disclosure agreements, or other confidentiality obligations to a third party that restrict or prohibit disclosure of such information by NS.

NS will construe CSX's Requests in accordance with the Board's rules and precedents. NS objects to any Request that seeks to impose a burden on NS greater than that allowed by applicable rules, specifically the permissible scope of discovery under 49 C.F.R. Part 1114, Subpart B, or other Board rules or precedents. NS will interpret the Requests reasonably and in good faith in accordance with common English usage as supplemented by its understanding of the common meanings of terms in the railroad industry.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. NS objects to each Definition and Instruction to the extent it purports to impose burdens or seeks to impose a burden on NS greater than that allowed by applicable rules, specifically the permissible scope of discovery under 49 C.F.R. Part 1114, Subpart B, or other Board rules or precedents. NS will construe the Instructions to follow applicable Board rules and precedents.

2. NS objects to Applicants' definition of Document as overly broad, unduly burdensome, vague, and ambiguous. NS further objects to the definition of Documents to the extent it includes documents not in NS's possession, custody, or control.

3. NS objects to Applicants' definition of NS as overly broad, unduly burdensome, vague, and ambiguous. NS will interpret "NS" to mean Norfolk Southern Railway Company for itself, its parent, affiliated and subsidiary companies.

SPECIFIC OBJECTIONS AND RESPONSES

DOCUMENT REQUESTS

1. *With respect to traffic movements both to and from Kansas City via 1) NSR's route between Kansas City and East St. Louis; and 2) KCS's line between Kansas City and East St. Louis, please identify and produce:*
 - a) *All business reports, plans, forecasts, and analyses assessing, reflecting, or representing the present state of such traffic movements; by cars, tons, origin and destination stations, commodity, car and traffic type;*
 - b) *All business reports, plans, forecasts, and analyses assessing, reflecting, or representing the future state of these traffic movements in the event that the transaction between CP and KCS is completed;*
 - c) *All documents reflecting any changes NS has considered, or plans, to service involving movements over NS's route between Kansas City and East St. Louis in the event the transaction between CP and KCS is completed;*
 - d) *All business reports, plans, forecasts, and analyses assessing, reflecting, or representing the future state of these traffic movements in the event that the Canadian National Railway Company's Responsive Application is granted by the STB; and*
 - e) *All documents reflecting any changes NS has considered, or plans, to service involving movements over NS's route between Kansas City and East St. Louis in the event that the Canadian National Railway Company's Responsive Application is granted by the STB.*

RESPONSE

NS objects to this request on the grounds that this request is overly broad, unduly burdensome, and not proportional to the needs of this case, because it seeks information that is not relevant to this proceeding. NS further objects to this request to the extent it calls for information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Subject to and without waiving any of its objections or the limitations articulated in the above Preliminary Statement, NS is willing to meet and confer about this request.

2. ***Please identify and produce documents sufficient to show NS's expectations regarding changes the merged CPKC may make regarding the interchange of traffic with NS at New Orleans, and any strategic or commercial responses NS has considered, or plans, to such expected changes, including but not limited to all business reports, plans, forecasts, and analyses assessing, reflecting, or representing such expectations and responses.***

RESPONSE

NS objects to this request because "including but not limited to" is vague and ambiguous, and thus renders the request overly broad, unduly burdensome, and not proportional to the needs of this case. NS objects to this request to the extent it calls for information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Subject to and without waiving any of its objections or the limitations articulated in the above Preliminary Statement, NS is willing to meet and confer about this request.

3. ***Please identify and produce, in unredacted form, all agreements and amendments that relate to the formation, governance, or operation of the Meridian Speedway LLC and NS's operations over the Meridian Speedway.***

RESPONSE

NS objects to this request because "NS's operations over the Meridian Speedway" is vague and ambiguous, and thus renders the request overly broad, unduly burdensome, and not proportional to the needs of this case. NS further objects to this request to the extent it calls for information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Subject to and without waiving any of its objections or the limitations articulated in the above Preliminary Statement, NS is willing to meet and confer about this request.

4. *Please identify and produce, in unredacted form, all filings with the Surface Transportation Board in Docket Numbers FD 34821, FD 34822, and FD 34823, including but not limited to:*

a) All exhibits, appendices, or workpapers thereto in support of the Verified Notice of Exemption filed on January 17, 2006, in STB FD 34821.

b) All exhibits, appendices, or workpapers thereto in support of the Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(3) filed on January 17, 2006, in STB FD 34822.

c) All exhibits, appendices, or workpapers thereto in support of the Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(7) filed on January 17, 2006, in STB FD 34823.

RESPONSE

Subject to and without waiving any of its objections or the limitations articulated in the above Preliminary Statement, NS will conduct a reasonable search and provide documents responsive to this request.

5. *Please identify and produce documents sufficient to show the timing, extent, and specific nature of NS's investments in the physical infrastructure of the Meridian Speedway (including but not limited to allotments of NS's purchase price for an interest in Meridian Speedway LLC spent to upgrade the Meridian Speedway and other NS funds used to upgrade the line) and the actual or anticipated effects of such investments on performance metrics on the Meridian Speedway, including but not limited to the capacity of the Meridian Speedway, the speed of trains running on the Meridian Speedway, and any measure of increased or decreased throughput of trains on the Meridian Speedway.*

RESPONSE

NS objects to this request because “physical infrastructure”, “performance metrics”, and “including but not limited to” are vague and ambiguous. NS further objects to this request to the extent it calls for information or documents protected from disclosure by the attorney-client

privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Subject to and without waiving any of its objections or the limitations articulated in the above Preliminary Statement, NS is willing to meet and confer about this request.

6. ***Please identify and produce documents sufficient to show the nature and extent of NS's marketing and sale of intermodal transportation services via the Meridian Speedway, including but not limited to business reports, plans, forecasts, projections, and analyses assessing, reflecting, or representing such activities.***

RESPONSE

NS objects to this request because "nature and extent of NS's marketing and sale" and "including but not limited to" are vague and ambiguous, and thus render the request overly broad, unduly burdensome, and not proportional to the needs of this case.

Subject to and without waiving any of its objections or the limitations articulated in the above Preliminary Statement, NS is willing to meet and confer about this request.

7. ***Please identify and produce documents sufficient to show the actual or anticipated competitive benefits and advantages to NS of its exclusive ability to transport over the Meridian Speedway all overhead intermodal traffic originating or terminating west of Dallas and east of Meridian, and not originating or terminating on KCSR, including but not limited to business reports, plans, forecasts, and analyses assessing, reflecting, or representing such competitive benefits.***

RESPONSE

NS objects to this request to the extent it purports to characterize rights or obligations created by documents that speak for themselves. NS further objects to this request because "including but not limited to" is vague and ambiguous, and thus renders the request overly broad, unduly burdensome, and not proportional to the needs of this case.

Subject to and without waiving any of its objections or the limitations articulated in the above Preliminary Statement, NS is willing to meet and confer about this request.

8. ***Please identify and produce documents sufficient to show NS's expectations regarding the incentives of a merged CPKC to divert traffic currently served by NS over the Meridian Speedway to other CPKC routes and interchanges with NS or with any other railroad.***

RESPONSE

NS objects to this request to the extent it calls for information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Subject to and without waiving any of its objections or the limitations articulated in the above Preliminary Statement, NS will conduct a reasonable search and provide documents responsive to this request.

9. ***Please identify and produce documents sufficient to show:***
- a) NS's historical traffic volumes (cars, tons) over the Meridian Speedway by origin and destination stations, commodity, route, car type;***
 - b) NS's historical revenue, rates, routes, and revenue divisions for traffic carried over the Meridian Speedway;***
 - c) NS's historical haulage fees over the Meridian Speedway paid per car, container, or trailer by origin and destination stations, commodity, route, car type;***
 - d) Any NS's business forecast for future traffic volumes, revenues, rates, routes, and divisions over the Meridian Speedway, including with and without the proposed CP and KCS transaction; and***
 - e) All workpapers and source data, in native file format, created for the Verified Statement of Michael R. McClellan filed as Exhibit B to the Comments filed by NS on February 28, 2022, including but not limited to the workpapers pertaining to the figures cited in Section II. And Section III.***

RESPONSE

NS objects to this request to the extent it calls for information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Subject to and without waiving any of its objections or the limitations articulated in the above Preliminary Statement, NS is willing to meet and confer about this request.

10. Please identify and produce documents sufficient to show:

a) Any actions NS has considered or planned regarding the exercise of its option to purchase the Wylie Intermodal Terminal;

b) NS's plans to market service to, from, or through the Wylie Intermodal Terminal after any anticipated purchase by NS of the Wylie Intermodal Terminal; and

c) NS's plans to market service involving interchange of traffic between NS and BNSF at Metro Junction, Texas, or service otherwise moving through the Dallas area.

RESPONSE

NS objects to this request to the extent it calls for information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Subject to and without waiving any of its objections or the limitations articulated in the above Preliminary Statement, NS will conduct a reasonable search and provide documents responsive to this request.

- 11. *Please identify and produce all documents that NS contends support the claim that NS's Responsive Application in this proceeding is related to the CP/KCS transaction that is the subject of the proceeding.***

RESPONSE

NS objects to this request on the grounds that this request is overly broad, unduly burdensome, and not proportional to the needs of this case, because it calls for NS to "identify and produce all documents." NS further objects to this request because "support the claim that NS's Responsive Application in this proceeding is related to the CP/KCS transaction" is vague and ambiguous. NS further objects to this request to the extent it calls for information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Subject to and without waiving any of its objections or the limitations articulated in the above Preliminary Statement, NS is willing to meet and confer with Applicants about this request.

- 12. *Please identify and produce all documents, not otherwise provided to the STB, that NS contends support any of the claims that NS has made in its Responsive Application.***

RESPONSE

Subject to and without waiving any of its objections or the limitations articulated in the above Preliminary Statement, NS is willing to meet and confer with Applicants about this request.

- 13. *Please identify and produce all information and documents that NS produces in response to discovery requests submitted by other participants in this proceeding.***

RESPONSE

Subject to and without waiving any of its objections or the limitations articulated in the above Preliminary Statement, NS will conduct a reasonable search and provide documents responsive to this request.

- 14. Please identify and produce all workpapers submitted to the Surface Transportation Board with or in support of any filings related to this proceeding.***

RESPONSE

NS objects to this request on the grounds that this request is overly broad, unduly burdensome, and not proportional to the needs of this case, because it calls for “all workpapers submitted to the Surface Transportation Board” without limitation as to who made the submission.

Subject to and without waiving any of its objections or the limitations articulated in the above Preliminary Statement, NS will provide workpapers submitted to the Surface Transportation Board in support of any NS filings related to this proceeding.

INTERROGATORIES

- 1. If any of the documents requested by CSXT above do not provide a full response to the referenced issue, please instead offer a more complete description, with reference to the Document Request to which the description is responsive.***

RESPONSE

NS objects to this interrogatory because “full response to the referenced issue” and “more complete description” are vague and ambiguous.

Consistent with the parties’ meet and confer discussions, NS will defer response to this interrogatory pending the party deposition CSX has requested of NS.

2. ***If NS were to exercise the Dallas Option and NS were to be granted the trackage rights sought in the NS Responsive Application, would KCS have the right to transport so-called "NS Traffic," as it is defined in the Meridian Speedway Agreements, over the Dallas-Shreveport Segment, other than as haulage for NS?***

RESPONSE

NS objects to this interrogatory because it calls for a legal conclusion. NS further objects to this interrogatory to the extent it calls for information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Consistent with the parties' meet and confer discussions, NS will defer response to this interrogatory pending the party deposition CSX has requested of NS.

3. ***If NS were to exercise the Dallas Option and NS were to be granted the trackage rights sought in the NS Responsive Application, would KCS be able to perform any agreement to interchange at Meridian with any non-NS railroad any so-called "NS Traffic," as it is defined in the Meridian Speedway agreements, that would involve KCS's transportation of said "NS Traffic" over the Dallas-Shreveport Segment, other than as haulage for NS?***

RESPONSE

NS objects to this interrogatory because it calls for a legal conclusion. NS further objects to this interrogatory to the extent it calls for information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Consistent with the parties' meet and confer discussions, NS will defer response to this interrogatory pending the party deposition CSX has requested of NS.

4. ***Does KCS have the right to transport intermodal traffic over the Meridian Speedway where the origin or destination of that traffic is on the KCSR system (as it existed at the time of the Meridian Speedway Agreements)?***

a. If so, how much of such traffic did KCS transport in 2021?

RESPONSE

NS objects to this interrogatory because it calls for a legal conclusion. NS further objects to this interrogatory to the extent it calls for information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Consistent with the parties' meet and confer discussions, NS will defer response to this interrogatory pending the party deposition CSX has requested of NS.

5. ***Does KCS have the right to transport intermodal traffic over the Meridian Speedway where the origin or destination of that traffic is in Mexico? How much of such traffic did KCS transport in 2021?***

RESPONSE

NS objects to this interrogatory because it calls for a legal conclusion. NS further objects to this interrogatory to the extent it calls for information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Consistent with the parties' meet and confer discussions, NS will defer response to this interrogatory pending the party deposition CSX has requested of NS.

6. ***Where "Dallas Intermodal Terminal Traffic," as it is defined in the Meridian Speedway Agreements, also constitutes "NS Traffic," as it is defined in the Meridian Speedway Agreements, if NS declines its right to participate in movement of that traffic (under the Dallas Terminal Marketing Agreement § 2(d) and/or any other applicable agreement(s)), does KCS have the right to***

transport such traffic over the Meridian Speedway other than as haulage by Meridian Speedway LLC, operated by KCS, for NS?

a. If KCS has such right, does such traffic constitute "KCSR Permitted Traffic," as it is defined in the Kansas City Southern Railway Company – Meridian Speedway LLC Joint Use Agreement?

RESPONSE

NS objects to this interrogatory because it calls for a legal conclusion. NS further objects to this interrogatory to the extent it calls for information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Consistent with the parties' meet and confer discussions, NS will defer response to this interrogatory pending the party deposition CSX has requested of NS.

7. ***For the purposes of the definitions of "NS Traffic" and "Dallas Intermodal Terminal Traffic" as they are defined in the Meridian Speedway Agreements, do the words "originate" and "terminate" (and grammatical variations thereon) as applied to intermodal traffic including transport by truck refer to the "origin" and "destination" of the combined truck-and-rail movement? For clarity and by way of example, if a container is dispatched by truck from point A, transferred to rail at point B, transported by rail to and transferred to truck at point C, and delivered by truck to point D, does it "originate" at point A and "terminate" at point D for the purposes of this definition?***

RESPONSE

NS objects to this interrogatory because it calls for a legal conclusion. NS further objects to this interrogatory to the extent it calls for information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Consistent with the parties' meet and confer discussions, NS will defer response to this interrogatory pending the party deposition CSX has requested of NS.

8. *For the purposes of the definitions of "NS Traffic" and "Dallas Intermodal Terminal Traffic" as they are defined in the Meridian Speedway Agreements, do the words "originate" and "terminate" (and grammatical variations thereon) as applied to intermodal traffic including transport by ship refer to the "origin" and "destination" of the combined ship-and-rail movement? For clarity and by way of example, if a container is dispatched from point X by ship, shipped to and transferred to rail at port Y, and delivered by rail to point Z, does it "originate" at point X for the purposes of this definition?*

RESPONSE

NS objects to this interrogatory to the extent it calls for information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest/joint defense privilege, or any other applicable privilege(s) or immunities.

Consistent with the parties' meet and confer discussions, NS will defer response to this interrogatory pending the party deposition CSX has requested of NS.

9. *Please identify all investments NS has made in the physical infrastructure of the Meridian Speedway since November 30, 2005, describing with particularity all physical changes made to the rail infrastructure in question related to such investments and the value of such investments.*

RESPONSE

NS objects to this interrogatory on the grounds that this request is overly broad, unduly burdensome, and not proportional to the needs of this case, because it calls for "all investments NS has made . . . since November 30, 2005."

Consistent with the parties' meet and confer discussions, NS will defer response to this interrogatory pending the party deposition CSX has requested of NS.

10. *For each investment identified in response to Interrogatory 9, please describe the investment's anticipated effects and, if known, actual effects, on performance metrics on the Meridian Speedway, including but not limited to the capacity of the Meridian Speedway, the speed of trains running on the Meridian Speedway, and any measure of increased or decreased throughput of trains on the Meridian Speedway.*

RESPONSE

NS objects to this interrogatory on the grounds that this request is overly broad, unduly burdensome, and not proportional to the needs of this case, because it calls for information going back to November 30, 2005.

Consistent with the parties' meet and confer discussions, NS will defer response to this interrogatory pending the party deposition CSX has requested of NS.

REQUESTS FOR ADMISSION

1. *Admit or deny that, absent consent by NS, NS's exclusive right to transport so-called "NS Traffic," as it is defined in the Meridian Speedway Agreements, over the Meridian Speedway, remains effective indefinitely.*

RESPONSE

NS objects to this request because "NS's exclusive right to transport so-called "NS Traffic" is vague and ambiguous.

Consistent with the parties' meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

2. *Admit or deny that KCS does not have the right to transport so-called "NS Traffic," as it is defined in the Meridian Speedway Agreements, over the Meridian Speedway, other than as haulage by Meridian Speedway LLC, operated by KCS, for NS.*

RESPONSE

NS objects to this request because it seeks information that is not relevant to this proceeding.

Consistent with the parties' meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

3. ***Admit or deny that, absent consent by NS, the restriction on KCS transportation of traffic referred to in Request for Admission 2 remains effective indefinitely.***

RESPONSE

NS objects to this request because "consent", "restriction", and "indefinitely" are vague and ambiguous.

Consistent with the parties' meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

4. ***Admit or deny that Meridian Speedway LLC does not have the right to transport so-called "NS Traffic," as it is defined in the Meridian Speedway Agreements, over the Meridian Speedway, other than as haulage by Meridian Speedway LLC for NS.***

RESPONSE

NS objects to this request because "as haulage by Meridian Speedway LLC for NS" is vague and ambiguous.

Consistent with the parties' meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

5. ***Admit or deny that, absent consent by NS, the restriction on Meridian Speedway LLC transportation of traffic referred to in Request for Admission 4 remains effective indefinitely.***

NS objects to this request because “consent”, “restriction”, and “indefinitely” are vague and ambiguous.

Consistent with the parties’ meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

6. ***Admit or deny that KCS cannot agree to interchange at Meridian with any non-NS railroad any so-called “NS Traffic,” as it is defined in the Meridian Speedway Agreements, that would involve KCS’s transportation of said “NS Traffic” over the Meridian Speedway other than as haulage by Meridian Speedway LLC, operated by KCS, for NS.***

NS objects to this request because “as haulage by Meridian Speedway LLC for NS” is vague and ambiguous.

Consistent with the parties’ meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

7. ***Admit or deny that, absent consent by NS, the restriction on KCS’s ability to perform interchange agreements referred to in Request for Admission 6 remains effective indefinitely.***

NS objects to this request because “consent”, “restriction”, and “indefinitely” are vague and ambiguous.

Consistent with the parties’ meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

8. ***Admit or deny that Meridian Speedway LLC cannot perform any agreement to interchange at Meridian with any non-NS railroad any so-called “NS Traffic,” as it is defined in the Meridian Speedway Agreements, that would involve***

Meridian Speedway LLC's transportation of said "NS Traffic" over the Meridian Speedway other than as haulage by Meridian Speedway LLC for NS.

NS objects to this request because "perform any agreement" and "said 'NS Traffic'" are vague and ambiguous.

Consistent with the parties' meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

- 9. Admit or deny that, absent consent by NS, the restriction on Meridian Speedway LLC's ability to perform interchange agreements referred to in Request for Admission 8 remains effective indefinitely.***

NS objects to this request because "consent", "restriction", and "indefinitely" are vague and ambiguous.

Consistent with the parties' meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

- 10. Admit or deny that so-called "NS Traffic," as applicable to the responses to all of the foregoing Requests, includes all intermodal traffic that enters or exits the Meridian Speedway at Shreveport, LA, and enters or exits the Meridian Speedway at Meridian, MS, with domestic origins or destinations west of Dallas/Fort Worth (including west coast port traffic) other than on the KCSR system (as it existed at the time of the Meridian Speedway Agreements) and domestic origins or destinations at or east of Meridian, regardless of whether NS participates or appears in the movement of that traffic other than in its movement over the Meridian Speedway. To the extent the answer differs with respect to foregoing Requests, please explain the difference, describing with particularity what traffic does and does not constitute "NS Traffic" for the purposes of each Request.***

NS objects to this request because "as applicable to the response to all of the foregoing Requests" and "appears in the movement" are vague and ambiguous. NS further objects to this request because it is compound and calls for a narrative.

Consistent with the parties' meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

- 11. Admit or deny that KCS cannot quote rates for intermodal traffic moving over the Meridian Speedway that originate or terminate west of Dallas, TX and terminate or originate east of Meridian, MS.**

NS objects to this request because "cannot quote rates" is vague and ambiguous.

Consistent with the parties' meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

- 12. Admit or deny that KCS cannot handle intermodal traffic in its own account that moves over the Meridian Speedway and originates or terminates west of Dallas, TX and Meridian, MS.**

NS objects to this request because "cannot handle" is vague and ambiguous.

Consistent with the parties' meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

- 13. Admit or deny that NS intends to interchange intermodal traffic with BNSF Railway Company at Metro, TX if the STB grants NS's Responsive Application.**

NS objects to this request because "intends to interchange" is vague and ambiguous.

Consistent with the parties' meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

- 14. Admit or deny that KCS is contractually prohibited from interchanging intermodal traffic with CSXT at Meridian, MS if that traffic originates or terminates east of Meridian and west of Dallas.**

NS objects to this request because "contractually prohibited" is vague and ambiguous.

Consistent with the parties' meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

15. Admit or deny that NS filed an application with the STB under 49 U.S.C. § 11322 for authority to divide traffic with KCS moving over the Meridian Speedway.

NS objects to this request because "an application with the STB" is vague and ambiguous. NS further objects to this request because it calls for an improper legal conclusion.

Consistent with the parties' meet and confer discussions, NS will defer response to this request pending the party deposition CSX has requested of NS.

* * *

Dated: April 6, 2022

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher J. Abbott", with a long horizontal flourish extending to the right.

Christopher J. Abbott

Attorney for Norfolk Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of April 2022 the above Responses and Objections to Applicants' First Set of Interrogatories and Third Set of Discovery Requests to Norfolk Southern Railway Company in Docket No. FD-36500 was served by electronic or first class mail, postage pre-paid, on all parties of record in this proceeding.


Christopher J. Abbott

EXHIBIT

D

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 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

NOTICE OF DEPOSITION FOR CSX TRANSPORTATION, INC.

Counsel for Norfolk Southern Railway Company, pursuant to 49 C.F.R. § 1114.22, will depose an officer or officers designated by CSX Transportation, Inc. (“CSX”) who has knowledge of CSX’s intermodal business, including CSX’s marketing and operations over the Meridian & Bigbee Railroad, CSX’s use of the route between Meridian, MS, and Shreveport, LA, prior to 2006, CSX’s communications with any third party relating to the Meridian Speedway, and CSX’s participation (or decision to not participate) in FD 34821, FD 34822, and FD 34823. The deposition will commence on April 22, 2022 at 9:00am Eastern and continue until completed. The deposition will take place over video conference.

Respectfully submitted this 1st day of April, 2022.

Nabanita C. Nag
Thomas E. Zoeller
Hanna M. Chouest
Norfolk Southern Corporation
650 W Peachtree St NW
Atlanta, GA 30308
Tel: (470) 463-6314

/s/ Christopher J. Abbott
Christopher J. Abbott
Weil, Gotshal & Manges LLP
2001 M Street NW
Suite 600
Washington, DC 20036
Tel: (202) 682-7000
Christopher.Abbott@weil.com

Attorneys for Norfolk Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2022 the above Notice of Deposition for CSX Transportation, Inc. has been served electronically or by first class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, CSX Transportation, Inc.'s representatives, Applicants' Representatives, Administrative Law Judge Thomas McCarthy, and all parties of record in this proceeding.

/s/ Christopher J. Abbott
Attorney for Norfolk Southern Railway
Company
April 1, 2022

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 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

NOTICE OF DEPOSITION FOR CSX TRANSPORTATION, INC.

Counsel for Norfolk Southern Railway Company, pursuant to 49 C.F.R. § 1114.22, will
depose Ms. Julie M. Carey. The deposition will commence on April 21, 2022 at 9:00am Eastern
and continue until completed. The deposition will take place over video conference.

Respectfully submitted this 1st day of April, 2022.

Nabanita C. Nag
Thomas E. Zoeller
Hanna M. Chouest
Norfolk Southern Corporation
650 W Peachtree St NW
Atlanta, GA 30308
Tel: (470) 463-6314

/s/ Christopher J. Abbott
Christopher J. Abbott
Weil, Gotshal & Manges LLP
2001 M Street NW
Suite 600
Washington, DC 20036
Tel: (202) 682-7000
Christopher.Abbott@weil.com

*Attorneys for Norfolk Southern Railway
Company*

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2022 the above Notice of Deposition for CSX Transportation, Inc. has been served electronically or by first class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, CSX Transportation, Inc.'s representatives, Applicants' Representatives, Administrative Law Judge Thomas McCarthy, and all parties of record in this proceeding.

/s/ Christopher J. Abbott
Attorney for Norfolk Southern Railway
Company

April 1, 2022

EXHIBIT

E



Fwd: FD36500: Following-up on depositions
Paul A. Cunningham to: Team CPKC

06/13/2022 02:56 PM

Paul A. Cunningham
Harkins Cunningham LLP
[1750 K Street, NW](#)
[Washington, DC 20006](#)

Mobile: [202-415-4026](#)
Fax: [202-973-7610](#)
pac@harkinscunningham.com

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Begin forwarded message:

From: "Mahan, Carrie" <Carrie.Mahan@weil.com>
Date: June 13, 2022 at 14:36:21 EDT
To: nkling@harkinscunningham.com, "Baquet, Daniel" <Daniel.Baquet@weil.com>
Cc: pac@harkinscunningham.com, "Kucerik, Brianne" <brianne.kucerik@weil.com>, "Scribner, John" <John.Scribner@weil.com>
Subject: RE: FD36500: Following-up on depositions

Hi Neill,

I am traveling today and will not be able to comply with your proposed deadline. As you know, I am taking over for Chris Abbott on this matter and am still reviewing your filings from Thursday night. I will be back in touch within the next several days. Any witnesses that NS will put up for deposition will not be available next week. And of course we will not seek CSX depositions next week either.

Thank you.

Best
Carrie

From: nkling@harkinscunningham.com <nkling@harkinscunningham.com>
Sent: Monday, June 13, 2022 2:30 PM
To: Baquet, Daniel <Daniel.Baquet@weil.com>
Cc: Mahan, Carrie <Carrie.Mahan@weil.com>; pac@harkinscunningham.com

Subject: RE: FD36500: Following-up on depositions

Yes Dan:

Just reached out to Carrie and left a voicemail.

Carrie, my number is 610-291-0189.

Thanks,

Neill

Neill C. Kling

Harkins Cunningham LLP

1055 Westlakes Drive, Suite 300 Berwyn, PA 19312

Direct: 215.851.6709 | Main: 215.851.6700 | Fax: 215.851.6710

nkling@harkinscunningham.com | www.harkinscunningham.com

From: "Baquet, Daniel" <Daniel.Baquet@weil.com>
To: "nkling@harkinscunningham.com" <nkling@harkinscunningham.com>
Cc: "Mahan, Carrie" <Carrie.Mahan@weil.com>, "pac@harkinscunningham.com" <pac@harkinscunningham.com>
Date: 06/13/2022 02:26 PM
Subject: RE: FD36500: Following-up on depositions

Hi Neill –

I received your voicemail this afternoon, but I am out of the office through this Thursday. Could you please reach out to my colleague, Carrie Mahan (copied), at 202 682 7231 to continue the discussion on depositions?

Many thanks,
Dan



Daniel Baquet
+1 202 682 7102 Direct
+1 347 302 5289 Mobile

From: nkling@harkinscunningham.com <nkling@harkinscunningham.com>
Sent: Friday, June 10, 2022 1:51 PM
To: Baquet, Daniel <Daniel.Baquet@weil.com>

Cc: Mahan, Carrie <Carrie.Mahan@weil.com>; pac@harkinscunningham.com

Subject: Re: FD36500: Following-up on depositions

Thank you Dan:

We will check dates and let you know what works for CSXT's witnesses. As we discussed earlier this week, CSXT will seek not only to take the NS party deposition noticed earlier, but also Dr. Mayo's deposition. Please provide me with dates for both for the week of June 21 and we will get out notices. As I said on the phone call, it is important that we get these dates resolved by close of business Monday.

Best regards,

Neill

Neill C. Kling

Harkins Cunningham LLP

1055 Westlakes Drive, Suite 300 Berwyn, PA 19312

Direct: 215.851.6709 | Main: 215.851.6700 | Fax: 215.851.6710

nkling@harkinscunningham.com | www.harkinscunningham.com

From: "Baquet, Daniel" <Daniel.Baquet@weil.com>
To: "nkling@harkinscunningham.com" <nkling@harkinscunningham.com>
Cc: "Mahan, Carrie" <Carrie.Mahan@weil.com>
Date: 06/10/2022 01:35 PM
Subject: FD36500: Following-up on depositions

Hi Neill,

Thanks for the call this afternoon. As mentioned, we will be in touch next week with potential dates for the party deposition of Norfolk Southern.

Could you please provide dates before June 27th when the witness or witnesses for the CSXT party deposition will be available and dates before June 27th when Ms. Carey will be available for her deposition?

Many thanks,
Dan



Daniel Baquet

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EXHIBIT

F

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 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

AMENDED NOTICE OF DEPOSITION
FOR NORFOLK SOUTHERN RAILWAY COMPANY

Counsel for CSX Transportation, Inc., pursuant to 49 C.F.R. § 1114.22, will depose an officer or officers designated by the Norfolk Southern Railway Company (“NS”) who is knowledgeable in all aspects of the Meridian Speedway relationship between Kansas City Southern Railway and NS, including but not limited to the formation of the Meridian Speedway LLC (“MSLLC”), the financing, economics, maintenance, marketing, and operations of the Meridian Speedway, and the negotiation of pricing for movements over the Meridian Speedway. The deposition will commence on Wednesday, June 22, 2022, at 9:30 AM EST and continue until completed. The deposition will take place over videoconference.

The circumstances of this Amended Notice evince a studied avoidance of NS’s discovery obligations. CSXT served a Notice of Deposition for a designee of NS on March 22, 2022, along with numerous interrogatories and requests for admission. In a meet and confer on March 24, 2022, CSXT agreed to postpone responses and interrogatories and requests for admission until after noticed deposition, and NS stated that the deponent would likely (90% chance) be Michael R. McLellan, who submitted the principal Verified Statement in support of NS’s Comments and Request for Conditions on February 28, 2022 (NS-9). On April 6, 2022, NS responded to CSXT’s First Discovery Request, asserting that several answers to

interrogatories and requests for admission would await CSXT's "30(b)(6)" deposition of NS's designated deponent. In April 2022 discussions concerning CSXT's original Notice, counsel for NS stated that, in light of the Surface Transportation Board's (STB's) suspension of the procedural schedule, it would make sense that the depositions noticed by CSXT, and NS be scheduled after the submission of any amended comments and responsive applications that would be filed on the revised schedule. Mr. Cunningham, counsel for CSXT, agreed with that approach, assuming that the depositions would be scheduled promptly after the submission of responses to the amended application.

On April 27, 2022, STB issued Decision No. 17 setting forth, among other things, a revised schedule calling for Applicants to file an Amended Application by May 27, 2022, Revised Comments and Responsive Applications within 20 days after the Amended Application filing, and Responses to such Comments and Responsive Applications within 60 days after the Amended Application filing. On May 13, 2022, Applicants submitted their Amended Application. Following an additional week extension for Revised Comments and Responsive Applications (STB Decision 18), NS submitted an Amended Responsive Application and Amended Comments and Requests for Conditions on June 9, 2022. However, because the date to respond revised comments and applications has not changed, CSXT still has only until July 12, 2022, to submit comments on NS's Amended Responsive Application and Request for Conditions.

Anticipating the tight schedule for CSXT's response to any amended pleadings, Neill Kling of Harkins Cunningham called Daniel Baquet, counsel for NS, on Monday, June 6, 2022 to schedule the long-noticed NS deposition for shortly after the amended filings. Mr. Kling was told that NS was "not sure" that the deponent would be Mr. McClellan, but in any event NS

counsel was in no position to schedule depositions until after the amended filings on June 9, 2022. Mr. Kling agreed to wait until after that date to inquire further about the CSXT Notice, and called Mr. Baquet again on Friday, June 10, 2022, to inquire about dates the week of June 21, 2022. Mr. Baquet stated that he would be discussing the matter with NS that afternoon, and that he would provide Mr. Kling with a schedule of available dates “early next week.” Mr. Kling emphasized the importance of having an answer by close of business on Monday, June 13, 2022. Mr. Bouquet mentioned nothing suggesting he would be unable to comply with that request.

At 1:35 that afternoon, Mr. Bouquet e-mailed Mr. Kling and stated that NS “would be in touch next week with potential dates for the party deposition on Norfolk Southern” and asked for the availability of CSX witnesses in response to NS requests for depositions (served on April 1, 2022) that would occur by June 27, 2022. Mr. Kling responded at 1:51 PM stating that CSXT would check dates and reply to that request but emphasized the importance of receiving a response to CSXT’s request by close of business on Monday, June 13, 2022.

Mr. Kling reached out to Mr. Baquet at 1:02 pm on June 13, 2022 to discuss deposition dates of NS and CSXT witnesses. Mr. Baquet then e-mailed Mr. Kling at 2:26 pm stating, for the first time, that he was out of the office through Thursday, June 16, 2022, and that Mr. Kling should call Carrie Mahan. Mr. Kling then immediately called Ms. Mahan, left a voicemail, and received an e-mail from her that she too was out of the office, “will not be able to comply with your proposed deadline,” and would respond “within the next several days.” Ms. Mahan further stated that “any witnesses that NS will put up for deposition will not be available next week.” The e-mail thread supporting these statements is attached hereto as Exhibit “A.”

The time for CSXT to respond to NS’s Comments and Responsive Application is fast

approaching. CSXT cannot wait until NS is ready to provide a witness given that deadline. Hence, CSXT notices the long-postponed deposition of NS's designated deponent on June 22, 2022. Absent making other mutually acceptable arrangements, if NS fails to appear on that date, CSXT will immediately file a Motion with Judge McCarthy to compel that testimony.

Respectfully submitted this 13th day of June 2022.

/s/ Paul A. Cunningham

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Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

*Attorneys for CSX Transportation,
Inc.*

Dated: June 13, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing CSX Transportation, Inc. Amended Notice of Deposition for Norfolk Southern Railway Company to be served electronically or by first-class mail, postage pre-paid, on the 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
Paul A. Cunningham
*Attorney for CSX
Transportation, Inc.*

June 13, 2022