

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36500 (SUB-NO. 1)

ILLINOIS CENTRAL RAILROAD COMPANY – ACQUISITION OF A LINE
OF RAILROAD BETWEEN KANSAS CITY, MO, AND SPRINGFIELD AND
EAST ST. LOUIS, IL – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 2)

ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS
BETWEEN AIRLINE JUNCTION, MO, AND GRANDVIEW, MO – KANSAS
CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 3)

CANADIAN NATIONAL RAILWAY COMPANY AND ILLINOIS CENTRAL
RAILROAD COMPANY – CONTROL – GATEWAY EASTERN RAILWAY
COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 4)

ILLINOIS CENTRAL RAILROAD COMPANY – ASSIGNMENT OF KCS
TRACKAGE RIGHTS BETWEEN ROCK CREEK JUNCTION, MO, AND
AIRLINE JUNCTION, MO – UNION PACIFIC RAILROAD COMPANY

**RESPONSE OF THE COALITION TO STOP CPKC TO THE
RESPONSIVE APPLICATION OF THE CANADIAN NATIONAL RAILWAY
COMPANY AND ILLINOIS CENTRAL RAILROAD COMPANY**

Pursuant to Decision No. 20 served by the Surface Transportation Board (“STB” or
“Board”) in this proceeding, the Village of Itasca, Illinois, Village of Bensenville, Illinois, City of
Wood Dale, Illinois, Village of Roselle, Illinois, Village of Schaumburg, Illinois, Village of
Hanover Park Illinois, Village of Bartlett, Illinois, City of Elgin, Illinois, and DuPage County,

Illinois,¹ (collectively the Coalition to Stop CPKC (“Coalition”)) hereby submit this Response in support of the Responsive Application of The Canadian National Railway Company and Illinois Central Railroad Company (“ICRR”) (together “CN”). Summary descriptions of the municipality members of the Coalition are included in Attachment A to the Coalition’s Opening Comments and Request for Conditions.

I. Introduction

The Opening Comments and Request for Conditions of the Coalition (“Coalition Comments”) described how the proposed merger of CP² and KCS will result in substantial harm to the Coalition and their 325,000 inhabitants, primarily because the Applicants’ operating plan could result in the introduction of up to 14.6 new freight trains per day over the segment of the Elgin Subdivision running through their communities. The Coalition’s Response to the Comments and Requests for Conditions of the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (“Metra”) summarize how Metra’s more detailed modeling analysis of the adverse impacts of the merger on the Metra’s system, and the Elgin Subdivision in particular, confirms the Coalition’s fears and demonstrates that the Coalition’s preliminary assessment of the impacts is understated. Consequently, the need for the Board to condition any approval of the proposed merger in part by limiting the number of and size of freight trains on the western end of the Elgin Subdivision is extremely acute.

¹ DuPage County, Illinois formally joined the Coalition on March 8, 2022. DuPage County is the second largest county in the State of Illinois (926,000 residents). Six of the Coalition members (Bartlett, Wood Dale, Itasca, Hanover Park, Roselle, and Schaumburg) are located either entirely or partially within DuPage County. The DuPage County government serves all unincorporated areas of the county.

² This Response utilizes the abbreviations for the merger applicants, and definition of Applicants, that have been utilized by all parties throughout this proceeding.

This Response expresses the Coalition’s general support for CN’s Responsive Application because it would reinforce and enhance an existing parallel alternative to the merged CPKC for transporting trains – particularly automotive and intermodal traffic - to and from Kansas City and the Chicago metropolitan area. If established and made effective by CN, this alternative routing could potentially result in fewer freight trains running through the Coalition communities, thereby alleviating some of the harm that will be caused by the merger as proposed. CN’s Responsive Application therefore should be found to be in the public interest.

II. Specific Comments on Responsive Application

CN has asked the Board to condition any approval of the merger of CP and KCS on the divestiture to CN of certain KCS-owned lines extending from Kansas City, Missouri to Springfield, Illinois (collectively called the “Springfield Line”), pursuant to the Board’s statutory authority to order ‘the divestiture of parallel tracks’ as a condition.”³ The Springfield Line connects to CN’s existing line running from Springfield into the Chicago area and Detroit, Michigan. The Responsive Application is broken up into four sub dockets. The Coalition does not have specific comments on the merits of the individual transactions. Rather, this Response addresses the purpose of the Responsive Application as a whole, which CN states is “necessary to address significant horizontal competition concerns raised by the CP-KCS merger”⁴ by creating “a competitive routing option for the Kansas City-Chicago-Detroit corridor” to the merged CPKC railroad’s Kansas City to Chicago single-line routing, which runs in part over the Elgin Subdivision to get into and out of Chicago. The competitive, parallel routing created by CN’s Responsive Application would enable freight trains to reach Chicago and points beyond by avoiding entirely

³ 49 U.S.C. § 11324(c).

⁴ Responsive Application at 9.

the western end of the Elgin Subdivision. CN states that grain, intermodal, and automobile shippers would benefit the most from its proposal.⁵

The Coalition has detailed in its Opening Comments, Supplemental Opening Comments and Requests for Conditions, and its Response to Metra's Comments how CP presently operates three freight trains per day over the western end of the Elgin Subdivision and how, despite the Applicants' attempts to downplay the amount of additional daily freight trains that will run over this line post-merger, CPKC could attempt to transport up to 14.6 new freight trains each day over this line in addition to the Metra commuter traffic that is climbing back to pre-pandemic levels.⁶

Many of the freight trains that run over the western end of the Elgin Subdivision are automotive and intermodal trains that CP transports to and from Kansas City and downtown Chicago (and points east of Chicago such as Detroit and Toronto). These trains are typically around 10,000 feet long but can be 12,000 feet long.⁷ The Coalition's other filings in this proceeding detail the harms such trains currently cause to its member communities. The Applicants have stated that the eight additional freight trains they intend to transport through the Coalition communities post-merger will be "primarily intermodal and automotive loads" that are destined for Chicago's Bensenville Yard and points beyond.⁸ This traffic is potentially traffic that shippers could choose to transport over the parallel route that would be created by CN's Responsive Application.

The Coalition concurs with CN's statement that "[a]llowing CP to consolidate control over two routes between Kansas City and Chicago, Detroit, and Eastern Canada would reduce

⁵ Responsive Application at 14 and Verified Statement of David T. Hunt.

⁶ Comments and Request for Conditions of the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra at 5.

⁷ Coalition Comments at 8-9.

⁸ *Id.* at 10, citing Operating Plan at 58; *See Applicants' Amended Operating Plan* at 73, 91.

competitive alternatives for rail customers”⁹ According to CN, its Responsive Application will “provide a superior alternative to CP’s more circuitous route and would be particularly valuable in connecting auto manufacturers in Michigan and Ontario with the key Kansas City Gateway and greater Missouri market.”¹⁰ CN further asserts that “[b]y acquiring the Springfield Line, CN will (1) preserve competition between Kansas City and Chicago over the historic Gateway Western line, which has been a competitive route for rail customers for more than 100 years; and (2) introduce new single-line rail automotive and intermodal service between Michigan/Eastern Canada and Kansas City.”¹¹ CN has proposed to develop this traffic in part by making substantial infrastructure investments.¹² These investments include ICRR constructing a new intermodal/automobile terminal in East St Louis. That traffic will be transported to Roodhouse, Illinois where it will connect with a new train to and from Kansas City and Chicago.¹³

Significantly, CN has also committed to provide CP-KCS with haulage rights over the Springfield Line for all current and future customers of the merged railroad.¹⁴ The Coalition understands these haulage rights would enable CPKC to utilize the Springfield Line and interchange with CN for movement of freight trains to and from Chicago and Detroit. At a minimum, this alternative routing would provide a means for CPKC to alleviate congestion and other service meltdowns that inevitably occur in the Chicago area over CP’s existing lines by routing CPKC trains instead over CN’s parallel line. However, it also provides an opportunity for

⁹ *Id.* at 3.

¹⁰ *Id.* at 13.

¹¹ *Id.* at 33.

¹² *See Id.* at 3 (“CN is committed to making substantial investments not merely to preserve the Springfield Line as a competitive routing option for the Kansas City-Chicago-Detroit-Eastern Canada corridor, but to upgrade it into a faster, more efficient route.”).

¹³ *Id.* at 35, 37.

¹⁴ *Id.* at 4, 14.

such freight trains, especially automotive and intermodal trains, to be diverted from the western end of the Elgin Subdivision onto CN's system through rail-to-rail competition between CN and the merged CPKC. Admittedly, how many of the additional freight trains the Applicants' project to traverse through the Coalition communities post-merger would instead travel on CN's system to reach Chicago remains to be seen. But, as stated previously, permitting CP and KCS to consolidate both routes into and out of Chicago from Kansas City would ensure that no diversions took place to relieve the congestion and other impacts to the Coalition communities on the western end of the Elgin Subdivision resulting from the proposed merger.

III. Conclusion

Granting CN's Responsive Application, subject to appropriate oversight during implementation, would be in the public interest. It would establish a competitive alternative to the merged CPKC with the potential for commodities to be shipped by railroad to and from Kansas City and Chicago while alleviating the delays, congestion and other harm to the Coalition communities that will result on the Elgin Subdivision if this alternative routing is foreclosed by CP and KCS post-merger.

Respectfully submitted,



Thomas W. Wilcox
Law Office of Thomas W. Wilcox, LLC
1629 K. Street, NW Suite 300
Washington D.C. 20006
(202) 508-1065
tom@twilcoxlaw.com

Dated: July 12, 2022

*Attorney for the Village of Itasca and the
Coalition to Stop CPKC*

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July, 2022 a copy of the foregoing Response of the Coalition to Stop CPKC to the Responsive Application of Canadian National Railway and Illinois Central Railroad was served on each Party of Record listed on the official Service List for Docket No. FD 36500 (Sub Nos. 1-4)

Thomas W. Wilup
