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

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

Dear Ms. Brown,

On July 20, 2022, Applicants filed a letter motion to strike evidence in several July 12 pleadings (CP-55/KCS-41) (the “Motion”). Applicants moved to strike all CSXT’s July 12 comments (CSXT-13). CSXT responds here to Applicants’ proposal that the Board consider the Motion in an expedited manner that would deny CSXT the ability to respond within 20 days (August 9, 2022) as provided in the Board’s rules. 49 CFR 1104.13(a).

Applicants offer no good reason the Board should not apply its governing procedural rules.¹ Allowing CSXT to respond to the Motion as provided in the rules will allow the Board more than enough time to rule on the Motion and allow Applicants sufficient time to make any required changes to their briefing due September 20, 2022.

Applicants may be pressing the Board to decide the Motion with no responses because even an expedited review reveals the inadequacy of Applicants’ principal legal support.

¹ The only rationale Applicants offer is “to avoid the waste of resources that would be necessary were Applicants to consider taking the depositions of witnesses who have submitted offending testimony, or preparing their own surrebuttal submissions in response to that testimony.” Motion at 1. But Applicants do not explain why they presume to be able to file surrebuttal to comments about the initial comments and responsive applications of non-Applicants. The Board’s schedule does not allow such surrebuttals. Under Applicants’ logic, all parties would have an equal opportunity to take depositions and file responses rebutting Applicant’s July comments, which are primarily a defense of the Application.

First, Applicants mistakenly rely on the Board's ruling in the *UP/SP* proceeding² for the notion that CSXT's entire pleading should be stricken. In *UP/SP*, the Board defined pleading limits like those in this case for responsive comments. The Board precluded additional evidence in response to the Application. CSXT-13 did not offer evidence in response to the Application (CSXT did that on February 28 and June 9).³ CSXT responded to the Comments and Responsive Applications of other parties,⁴ most extensively to those of Norfolk Southern Railway ("NSR") (filed February 28, 2022 and amended June 9, 2022).⁵

Second, as further support for the notion that CSXT-13 falls outside the scope defined by the Board for the July 12 filing, Applicants cite *UP/CNW – Control*.⁶ Applicants are correct that parties' comments are limited to the scope defined by the Board. However, they ignore that the pleadings referenced in *UP/CNW* addressed different Board requirements from those governing the July 12 pleadings in this proceeding.⁷ CSXT-13 responds to others' comments and responsive applications, as the Board requested. (Decision 11 at 2).

Respectfully submitted,

/s/ Paul A. Cunningham

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*Attorney for CSX Corporation
and CSX Transportation, Inc.*

cc: All Parties of Record

² See *UP/SP*, Finance Docket No. 32760, at 3 (STB Decision No. 31, served Apr. 19, 1996).

³ As Applicants note: "(CSXT-13) essentially ignores the CP/KCS Transaction." Motion at 8.

⁴ See, e.g., CSXT-13 at 9, 10, 12, 13, 15, 25-28, 81-84.

⁵ NSR's comments request this condition: "Make no significant detrimental changes to current operations on the Meridian Speedway..." Finance Docket No. 36500, Comments of Norfolk Southern Railway Company and Request for Conditions (NS-9), at 46 (Feb. 28, 2022). See also generally Finance Docket No. 36500, Responsive Application of Norfolk Southern Railway Company (NS-8) (Feb. 28, 2022).

⁶ *UP/CNW – Control*, Finance Docket No. 32133 (ICC Decision No. 20 served Sept. 16, 1994).

⁷ In *UP/CNW*, the Board ruled that SP improperly filed a rebuttal in support of its own conditions on July 28, 1994, because the scope of that filing was limited to responding to UP/CNW's (the applicants in that case) response to responsive applications, and not the responsive applications to which UP/CNW responded. Applicants ignore that the authorized scope of the July 12 filing in this proceeding was different. That scope included responses to all "comments, protests, requests for conditions, and other opposition" as well as "responses to responsive applications" (Decision 11 at 2). It is virtually impossible to comment on others' comments on the Application without referencing the Application. To the extent that CSXT discussed the Application, it was only to contextualize its response to others' comments and responses thereto.

CERTIFICATE OF SERVICE

I hereby certify that I have caused this CSX Transportation, Inc.'s Certificate of Service for 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*, to be served by email or by first-class mail, postage prepaid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Thomas McCarthy, and all other parties of record.

/s/ Paul A. Cunningham

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and CSX Transportation, Inc.*

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