

LAW OFFICE OF DAVID L. MEYER
WWW.MEYERLAWDC.COM

1105 S STREET, N.W.
WASHINGTON, D.C. 20009
202-294-1399

305072

July 28, 2022

ENTERED
Office of Proceedings
July 28, 2022
Part of
Public Record

BY ELECTRONIC FILING

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

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

Dear Ms. Brown:

Applicants submit this reply to the letter filed by counsel for the so-called “Coalition to Stop CPKC” on July 27, 2022. Though styled as a response to Metra’s “Motion to Amend the Procedural Schedule,” the Coalition’s letter requests affirmative relief beyond that sought by Metra’s Motion, and Applicants accordingly are entitled to this reply.

The Coalition asks the Board to “grant the Coalition 20 days to review and supplement its July 12, 2022 Response to Metra.” The Coalition is not entitled to any such relief. The Board’s procedural schedule is not a tag-team wrestling match in which parties are entitled to their own special opportunity to submit evidence simply because they would like to piggyback on the work of others. Had the Coalition had any evidence backing up its baseless concerns about the CP/KCS Transaction,¹ its opportunity to submit that evidence was February 28, June 9, or at the latest July 12 if that evidence was legitimately responding to conditions proposed by others.

Instead, the Coalition chose a path in this proceeding that placed faith in evidence submitted by others (Metra) that Applicants have demonstrated is entitled to no weight.² The

¹ The Coalition has sought to block the merger by “capping the amount of freight trains on this segment at current levels” or compelling Applicants to spend more than \$9 billion on mitigation just for this handful of communities. See ITAS-4 (July 12, 2022) at 6, 15.

² See ITAS-4 (filed June 9, 2022) at 7 & n.13 (stating intention to respond to Metra evidence); ITAS-4 (misnumbered, filed July 12, 2022) (relying on Metra RTC evidence to support Coalition requests for conditions).

The Honorable Cynthia T. Brown
July 28, 2022
Page Two

fact that the underpinning of the Coalition's condition demands has now evaporated is not a basis for amending the procedural schedule in this case.³

The Coalition's letter is founded upon several mischaracterizations of the facts, which Applicants desire to correct:

- Echoing Metra, the Coalition implies that Applicants sprung a new RTC analysis on parties on July 12. This is inaccurate. Applicants were entitled to respond to the RTC analysis prepared by Metra's witness Crowley (which Mr. Crowley twice corrected at his own initiative), and Applicants did so on July 12 by identifying numerous errors in that analysis and then re-running the analysis as corrected to show that Metra's asserted conclusions about impacts on the lines shared by CP and Metra (and of concern to the Coalition communities) were incorrect. There was nothing procedurally improper about this, and nothing that warrants giving Metra another round of evidence to try to "do-over" its RTC analysis for the fourth time, or the Coalition an opportunity to piggyback on top of any such do-over.
- Echoing Metra, the Coalition asserts that "it cannot be ascertained what information the Applicants relied upon" in their July 12 testimony regarding Metra's RTC modeling. That is incorrect. All of the workpapers underlying that testimony have been produced. The Coalition and its counsel would not know this because they have not sought access to any of those workpapers.
- Echoing Metra, the Coalition asserts that the conclusions reached by Applicants based on re-running Metra's RTC modeling cannot be "tested." This is similarly incorrect. As noted, all of the workpapers are available to Metra and the Coalition, and either party's counsel would have the opportunity to cross-examine Applicants' witnesses on this subject if they wished to do so and address that testimony in its brief.⁴

³ Furthermore, the Coalition's motion will be rendered moot given that Metra is similarly unentitled to make a further evidentiary filing for the reasons set forth in CP-56/KCS-42 (filed July 25, 2022).

⁴ *CSX Corp. & CSX Transportation, Inc., Norfolk Southern Corp. & Norfolk Southern Ry. – Control & Operating Leases/Agreements – Conrail Inc. & Consolidated Rail Corp.*, Finance Docket No. 33388 (STB served Jan. 29, 1998) at 3 (denying appeal from ALJ ruling allowing depositions of rebuttal witnesses and addressing deposition testimony in briefs).

The Honorable Cynthia T. Brown
July 28, 2022
Page Three

Please contact me with any questions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Dan L Meyer", with a stylized, cursive script.

David L. Meyer

*Attorney for Canadian Pacific Railway
Limited*

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