



SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
+1 202 736 8000
+1 202 736 8711 FAX

AMERICA • ASIA PACIFIC • EUROPE

+1 202 736 8889
RATKINS@SIDLEY.COM

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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, DC 20423

Re: Finance Docket No. 36500, *Canadian Pacific Railway Company, et al.—Control—Kansas City Southern, et al.*

Dear Ms. Brown,

Canadian National Railway Company and its rail operating subsidiaries (collectively, “CN”) respectfully submit this letter in response to the motion to strike that Applicants submitted by letter on July 20, 2022. While Applicants primarily direct their motion at other parties, they also ask the Board to strike Section I of the Verified Statement that Derek Taylor submitted in support of CN’s July 12 Response to Comments. With respect to CN, Applicants’ motion is completely meritless.

Applicants’ suggestion that CN’s response to comments could only address “the impact of any conditions being sought by others” has no basis in Decision No. 11 or in Board precedent.¹ Indeed, the primary decision on which they rely made clear that all parties were allowed to respond “to issues and arguments raised” by other parties – not just the impact of conditions

¹ CP-55/KCS-41, *Canadian Pac. Ry.—Control—Kansas City S.*, STB Docket No. FD 36500, at 7 (filed July 20, 2022) (“CP-55/KCS-41”).

sought by others.² Mr. Taylor’s statement was unquestionably a response to arguments made by other parties. For example, the Opening Comments of the Coalition to Stop CPKC (“Coalition”) argued that “the CN responsive application will provide an additional opportunity for the Board to address the severe issues faced by the Coalition” and “alleviate congestion and service disruptions on the merged railroad’s system in Chicago.”³ Mr. Taylor’s verified statement was directly responsive to those comments; as he explained, “[t]hese communities are correct—divesting the Springfield Line to CN will provide a competitive routing alternative to a merged CPKC that would avoid additional congestion in Chicago and its suburbs.”⁴ Mr. Taylor then provided maps and commentary illustrating CN’s and CP’s routes through Chicago and the reasons why the Coalition is correct that north-south traffic on CN via the Springfield Line would avoid Chicago congestion.

Mr. Taylor also addressed arguments by “affected communities and Metra” that “CP has understated its projected merger-related train increases in Chicago,” and he identified particular concerns about Applicants’ failure to account for the impacts of planned traffic changes at Schiller Park Yard and on the CN track between Tower B12 and Schiller Park Yard.⁵ All of Mr.

² Decision No. 31, *Union Pac. Corp.—Control and Merger—S. Pac. Rail Corp.*, STB Docket No. FD 32760, 1996 WL 189464, at *3 (served Apr. 19, 1996).

³ Opening Comments and Request for Conditions for Conditions of the Coalition to Stop CPKC, *Canadian Pac. Ry. Ltd.—Control—Kansas City S.*, STB Docket No. 36500, at 19 (filed Feb. 28, 2022).

⁴ CN’s Response to Comments on Application, *Canadian Pac. Ry. Ltd.—Control—Kansas City S.*, STB Docket No. FD 36500 (filed July 12, 2022), Verified Statement of Derek Taylor Reply Comments, at 2 (“V.S. Taylor”).

⁵ *Id.*, V.S. Taylor at 5. CN’s Amended Comments filed on June 9 previously expressed concerns about Applicants’ failure to account for the impact of planned traffic changes at Schiller Park Yard and on the CN track between Tower B12 and Schiller Park Yard. CN-17, CN’s Comments on Applicants’ Amended Operating Plan, *Canadian Pac. Ry. Ltd.—Control—Kansas City S.*, STB Docket No. FD 36500, at 15 n.35 (filed June 9, 2022) (“CN-17”).

Taylor's comments were thus plainly a "Response[] to comments" expressing concerns about Chicago-area impacts, and they were explicitly authorized by the procedural schedule.⁶

Indeed, the point of Applicants' motion with respect to CN appears to be less about striking plainly appropriate reply evidence than about trying again to explain away the gaps and inconsistencies in their representations about their planned operations east of CP's Bensenville Yard. Applicants' claim to have consistently said that activity at Schiller Park will be "curtailed" in the future.⁷ They also claim that their merger "will not increase train counts east of Bensenville Yard."⁸ Neither claim is accurate. In fact, they project a 2440% increase in traffic at the "Schiller Park Auto"⁹ and a 103.4% increase in cars processed per day at the "Schiller Park Yard".¹⁰ In their July 12 Rebuttal they claim that "Trains 142 and 143 will no longer depart from or arrive at Schiller Park," but their May 13 Amended Operating Plan says the opposite.¹¹ And as CN has pointed out previously, Applicants have never disclosed in the Board's environmental review process the train counts going to or from Schiller Park, which they reach by operating via

⁶ Decision No. 11, *Canadian Pac. Ry. Ltd.—Control—Kansas City S.*, STB Docket No. FD 36500, at 17 (served Nov. 23, 2021).

⁷ CP-55/KCS-41 at 7 n.4.

⁸ *Id.*

⁹ CP-47/KCS-34, Amended Operating Plan (Exhibit 13), *Canadian Pac. Ry. Ltd.—Control—Kansas City S.*, STB Docket No. FD 36500, ¶ 164, Table 6 (filed May 13, 2022) ("Amended Operating Plan").

¹⁰ Amended Operating Plan, Appendix T, Amended Master Segment Table at 13.

¹¹ CP-53/KCS-39, *Canadian Pac. Ry.—Control—Kansas City S.*, STB Docket No. FD 36500, Reply Verified Statement of Raymond A. Elphick at ¶ 34 (filed July 12, 2022)p; *compare* Amended Operating Plan, Appendix I, Growth Plan Train Changes at 1.

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trackage rights on CN's track and Metra's track near Tower B-12.¹² And Applicants have never offered a cogent explanation as to how traffic levels requiring eight additional trains per day at Bensenville Yard to and from the west don't require any additional trains to or from Bensenville Yard in other direction.

The Board should carefully consider the evidence of all interested parties about the impact of the proposed CP-KCS merger on Chicago communities and the potential of CN's responsive application to avoid additional congestion in Chicago through divestiture of the Springfield Line. The Board should explore these issues at the upcoming public hearing. There is no basis to strike plainly relevant evidence about a matter of significant public concern.

Respectfully submitted,

/s/ Raymond A. Atkins

Raymond A. Atkins

Terence M. Hynes

Matthew J. Warren

Sidley Austin LLP

1501 K Street, N.W.

Washington, DC 20005

(202) 736-8000

ratkins@sidley.com

*Counsel for Canadian National
Railway Company*

cc: Parties of Record in FD 36500

¹² See CN-17 at 15 n.35.