

August 1, 2022

VIA E-FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 36500, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern et al.*

Dear Ms. Brown:

I am attaching for e-filing the Motion for Leave to File the Reply of the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra, in the above-referenced proceeding.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Charles A. Spitulnik

Enclosure

cc: All Parties of Record

**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**

MOTION FOR LEAVE TO FILE REPLY

Communications with respect to this pleading
should be addressed to:

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Dated: August 1, 2022

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MOTION FOR LEAVE TO FILE REPLY

The Commuter Rail Division of the Regional Transportation Authority d/b/a/ Metra (“Metra”) moves for leave to file a reply in order to comment on new information relied on in Applicants’¹ Response to Comments and Requests for Conditions, Opposition to Responsive Applications, and Rebuttal in Support of the Application, CP-53/KCS 39, filed July 13, 2022 (“Applicants’ Rebuttal”). Applicants’ Rebuttal contains assertions and data not previously presented by Applicants prior to this filing in support of their Application. Metra, and other commenters, are entitled to review Applicants’ new evidence, which includes “corrections” to Metra’s RTC modeling and analysis that, according to Applicants’ Rebuttal, appear to include data that was not previously disclosed to Metra. *See* 49 C.F.R. § 1180.1 (m); 49 C.F.R. 1180.2(h) (2000). Metra requests leave to reply to Applicants’ misleading statements and

¹ Applicants are: Canadian Pacific Railway Limited (“Canadian Pacific”), Canadian Pacific Railway Company (“CPRC”), and their U.S. rail carrier subsidiaries Soo Line Railroad Company, Central Maine & Quebec Railway U.S. Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively, “CP”); and Kansas City Southern and its U.S. rail carrier subsidiaries The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company (collectively, “KCS”). CP and KCS are collectively referred to as the “Applicants.”

mischaracterizations presented in the Applicants' Rebuttal, in the interest of compiling a complete and accurate record for the Board's review. Metra is filing a Reply concurrently with this Motion in anticipation of a favorable ruling on its request.²

BACKGROUND

As noted previously, METR-3, Metra, a state created public agency, oversees commuter rail operations in northeastern Illinois, and is the owner and oversees passenger rail operation of the Milwaukee District-North Line ("MD-N Line") and Milwaukee District-West Line ("MD-W Line"), over which CP operates as part of its C&M and Elgin Subdivisions, respectively, and which will be impacted by the proposed transaction.

Applicants filed their Application on October 29, 2021, in which they asserted that they would be adding additional freight trains amounting up to a 280% increase³ in freight traffic on portions of lines owned by Metra and operated by CP. Applicants claimed that Metra's lines had "ample" capacity to accommodate the Transaction and Metra's service would not be impacted. CP-25/KCS-13 at 332.

On July 13, Applicants filed the Applicants' Rebuttal responding to comments in this proceeding. CP-53/KCS-39. Applicants included, for the first time, data regarding "corrections" to Metra's RTC modeling along with misleading and incorrect statements about Metra's operations and performance. See CP-53/KCS-39 at 159-165. Metra is filing the attached Reply,

² On July 21, Metra filed a motion to Amend the Procedural Schedule (METR-11) to allow time for Metra to review the considerable amount of new evidence submitted by Applicants in the Applicants' Reply. That motion is still pending before the Board. Metra continues to seek the revision to the procedural schedule that it requested previously in order to allow its consultants sufficient time to analyze and comment on the considerable amount of new data that Applicants submitted on July 13. The Reply that is filed simultaneously with this Motion corrects the numerous factual misstatements and misrepresentations Applicants included in that filing, but does not include a full analysis of those new data because there has not been sufficient time for consultants to complete that thorough review.

³ Applicants' Amended Operating Plan, submitted May 13, 2022, now reflects a 250% increase, from 3.2 to 11.2 trains in the portion of Metra's Milwaukee District-West line west of Bensenville Yard. See CP-47/KCS-34, App. A at 4.

and has sought leave to file additional response to Applicants, *see* METR-11 filed July 21, 2022, in order to ensure that the Board’s consideration of the Application is based on a complete and accurate record.

A. ARGUMENT - Metra Should be Afforded an Opportunity to Respond to Applicants’ Misleading Assertions and Mischaracterizations of the Record.

Metra is filing this motion out of an abundance of caution due to the STB requirement that replies be filed within 20 days of a pleading, 49 C.F.R. 1104.13(a). Metra has already filed a similar motion requesting that the procedural schedule be amended to allow for more time to review the considerable amount of new information that Applicants provided in the Applicants’ Rebuttal. *See* METR-11. Amendment of the procedural schedule is essential to providing Metra and other parties sufficient time to review the new RTC modeling “corrections” that Applicants have submitted to the Board. However, since the Board has not yet provided a decision on that motion, Metra believes it is prudent to file this Motion and the accompanying Reply in order to request leave to file a reply that corrects inaccurate or misleading assertions made in Applicants’ Rebuttal other than the RTC “corrections,” as well as preliminary observations regarding Applicants’ RTC modeling and related criticisms. Metra is requesting acceptance of the reply filed simultaneously with this Motion into the record of this proceeding.

Pursuant to 49 C.F.R. 1104.13(a), replies are due 20 days after the filing of a pleading. Moreover, it is the Board’s practice to waive the prohibition on a sur-reply under 49 C.F.R. § 1104.13(c) for good cause. *Sierra R.R. Co. v. Sacramento Valley R.R. Co., LLC*, NOR 42133, slip op. at 1, n. 1 (STB served Mar. 9, 2012); *Cross Oil Ref & Mktg., Inc. v. Union Pac. R.R. Co.*, FD 33582, slip op. at 1 (STB served Oct. 27, 1998). 49 C.F.R. § 1100.3 (“The rules will be construed liberally to secure just, speedy and inexpensive determination of the issues

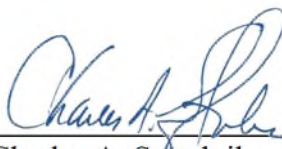
presented.”). Here, Applicants make misleading assertions and mischaracterizations of the record, described in Metra’s simultaneously filed Reply (METR-12), that must be corrected or contextualized.

Metra’s request for a sur-reply to Applicants’ Rebuttal is for good cause, as its purpose is to clarify or correct Applicants’ claims and to present a complete record to assist the Board in making an informed decision in this matter. *City of Alexandria--Pet. for Declaratory Order*, FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (allowing a reply to a reply “[i]n the interest of compiling a full record”). Moreover, allowing Metra to file this response will not broaden the issues raised in the proceeding. See *BNSF Railway Company — Abandonment Exemption — In Kootenai County, ID*, AB-6, slip op. at 1 (STB served Nov. 27, 2009) (It is “within the Board’s discretion to permit otherwise impermissible filings” and “because it provides a more complete record, clarifies the arguments, will not prejudice any party . . . it is appropriate to do so here.”). Therefore, the Board should grant Metra leave to file a reply to the Applicants’ Rebuttal.

CONCLUSION

For the foregoing reasons, Metra requests that the Board grant this Motion for Leave to File Reply. Metra respectfully requests that the Board allow Metra to file its sur-reply, along with its reply to other misleading statements presented in Applicants’ Rebuttal and for other relief as is appropriate.

Respectfully submitted,



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Dated: August 1, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have on the 1st day of August 2022, caused to be served a copy of the foregoing MOTION, upon all parties of record in this proceeding.



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