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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 Reply to Applicants' July 13, 2022 Rebuttal of the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra, in the above-referenced proceeding.

Please note that this filing comprises a Public Version and a Confidential Version. We are serving all parties of record with the Public version and will provide a copy of the Confidential Version to any party that confirms that they have signed the Confidential undertaking that the Board approved as part of the Protective Order in this 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

METRA REPLY TO APPLICANTS' JULY 13, 2022 REBUTTAL

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Dated: August 1, 2022

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SURFACE TRANSPORTATION BOARD

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METRA REPLY TO APPLICANTS' JULY 13, 2022 REBUTTAL

The Commuter Rail Division of the Regional Transportation Authority d/b/a/ Metra (“Metra”) submits this Reply to Applicants’¹ Reply to Comments and Requests for Conditions, Opposition to Responsive Applications, and Rebuttal in Support of the Application (“Rebuttal”) filed July 13, 2022, regarding their proposal to merge (“Transaction”). With their Rebuttal Applicants have dumped on the proceeding a trove of *new* data and information, included, *for the first time and after the close of public commenting*. In this Reply Metra corrects many inaccuracies and unsubstantiated opinions in Applicants’ Rebuttal, while Metra continues to review the rest of Applicants’ workpapers related to the belated modeling that Applicants have conducted after the close of public commenting and not with their Application.² What is clear

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.”

² With this Reply, Metra is filing a Motion for Leave to File a Reply (METR-12). Metra also filed on July 21, 2022, a Motion for Amendment of the Procedural Schedule (METR-11) that, when granted, will provide Metra’s consultants sufficient time to fully analyze the modeling data that Applicants submitted on July 13. Applicants’ tardy submission has provided insufficient time for Metra to fully analyze the data and work papers, and for

from Metra's review to date is that Applicants have, among other things: (1) twisted data to minimize the Transaction's impact on Metra's service by excluding new freight traffic increases, Amtrak increases, and "cascading delays" to Metra trains; (2) made dubious assumptions and relied upon data sources (such as timetables instead of track chart data) to its new RTC model; (3) criticized data used for Metra's RTC model, which was the data that CP supplied in its response to Metra's discovery requests; (4) mischaracterized Metra's rights to non-interference and operational flexibility on *its own lines*; and (5) argued that there was no need for Board oversight. The corrections Metra provides here are essential to establishing a complete, accurate record for the Board to consider when weighing the impact of the Transaction on essential passenger rail services.

BACKGROUND

Metra is a state created public agency that oversees passenger rail operations in northeast Illinois for its over 8 million citizens. *See* METR-3. Two of its eleven lines that are involved here are Metra's Milwaukee District-North Line ("MD-N Line") and Milwaukee District-West Line ("MD-W Line"). CP operates over both lines as part of its C&M and Elgin Subdivisions, and both will be adversely impacted by the proposed transaction.

Applicants filed their Application on October 29, 2021, asserting, without RTC modeling or any competent evidence, that the Transaction would result in a 280% increase³ in freight traffic on these Metra lines but that Metra's lines would not be impacted. CP-25/KCS-13 at 332. On May 13, 2022, at the Board's direction, Applicants amended their Operating Plan, when the CN notified the

Applicants to respond to Metra's discovery requests. Accordingly, this document covers only certain limited aspects of that modeling. Upon receipt of a favorable ruling on the Motion to Amend the Procedural Schedule, Metra will complete the analysis and will supplement at that time.

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 MD-W Line west of Bensenville Yard. *See* CP-47/KCS-34, App. A at 4.

Board that Applicants had submitted incorrect information. Thereafter, Applicants projected a 250% increase in freight traffic on MD-W west of Bensenville, and no impact on MD-W east of Bensenville or on MD-N, because of no “new trains” (without discussion of interchange assignments, trains linked on existing schedules, transfers, and/or local assignments), *id.* Vol. I at 202, omission of “organic” growth as “no[t] Transaction-related”, *id.* Vol. I at 173, and omission of foreign trains and increased Amtrak service that CP promised to Amtrak in exchange for Amtrak’s support, *id.* Vol. I at 218.

On July 13, 2022, Applicants filed their Rebuttal to initial comments submitted by Metra and others. CP-53/KCS-39. As discussed below, the Rebuttal included new information amounting to inaccurate RTC modeling and misstatements, again without competent support.⁴

REPLY

A. Applicants misstate the impact of the Transaction on Metra’s MD-W Line and Improvements to Bensenville Yard

Applicants assert, without competent evidence, that the increase in 8 freight trains on the MD-W Line west of Bensenville constitutes a “modest increase” with no resulting impact on Metra’s service:

The existing infrastructure on the MD-W Line west of Bensenville will easily accommodate the modest increase of 8.0 trains on that segment without disruption to Metra’s commuter service. *See* Elphick R.V.S. at ¶¶ 15-28. Properly understood, the Transaction will not harm Metra.

CP-53/KCS-39, Volume I, at 169. *id.* at 172. However, a **250% increase in traffic** is not “modest” and is contradicted by the competent evidence that Metra supplied indicating that CP’s

⁴ As Metra notes in footnote 2, upon a favorable ruling on its Motion to Amend the Procedural Schedule, Metra will have had sufficient time to analyze the data submitted by Applicants and will fully address Applicants’ conclusions in the first-time-for-Applicants-in-this-proceeding alleged modeling exercise.

dispatching and operations on that portion currently result in significant interference with Metra's service. *E.g.*, METR-7 at 54-55.

Applicants repeatedly state that the Transaction will not result in any increase in freight traffic on the MD-W line east of Bensenville and is supported by Mr. Elphick's opinion, without evidence, embodied in his "verified statement":

In fact, the Transaction will add *zero trains* per day east of Bensenville, . . . See Elphick R.V.S. at ¶ 7. All other CPKC traffic east of Bensenville to or from other railroads in Chicago, or traffic to or from east of Chicago (for example, Detroit or Eastern Canada), will be handled in existing trains as Mr. Elphick explains. Elphick R.V.S. at ¶ 10.

CP-53/KCS-39, Vol. I, at 172. *id.* at 175, 201, 204, 217. Traffic east of Bensenville that is moving to the Indiana Harbor Belt ("IHB") and Belt Railway of Chicago ("BRC") must increase, as will most likely traffic to and from the north with potential new shippers in places like Racine and Milwaukee taking advantage of a direct route to KCS points and beyond. Metra previously explained, in verified statements of Metra staff, including former CP employees with extensive experience of current interference caused by CP's operations, and using outputs by Metra's modeling, how Applicants' assertions ignore the actual operating environment in which Metra trains run. Notwithstanding the facts, by asserting that there will be no "new *trains*," Applicants remain silent on other movements, such as an increase in interchange assignments, trains linked on existing schedules, transfers, and/or local assignments. **Attachment A**, V.S. Cork ¶ 4. The train symbols may not operate east of Bensenville, however, the traffic will move under different symbols. So, Applicants' use of the term "train movements" excludes other type of movements that will impact the rail east of the Bensenville yard.

Applicants' fail to explain how an increase of 250% in traffic west of Bensenville will disappear by being "handled in existing trains," or how, if there are expected to be longer trains

rather than more, this will not result in the same impact or other impacts, such as longer delays at crossings and more interference with passenger access at stations.

Applicants state that double tracking on MD-W will alleviate the 250% increase in traffic:

As Mr. Elphick explains an RTC analysis is not needed to conclude the Elgin Subdivision has ample capacity to handle eight additional daily trains. See Elphick R.V.S. at ¶¶ 15-25. The track schematics in Figure 14 below shows the Elgin Subdivision from Tower A-5 to Randall Road where Metra's operations stop entirely. That segment is double track with frequent crossovers and extensive capacity. . . . As Mr. Elphick explains in detail, this infrastructure provides exclusive ability to add additional freight trains without interfering with Metra's trains. See Elphick R.V.S. at ¶¶ 19-21. His analysis shows the ease with which CP's four additional trains each way could flexibly be slotted between Metra's tightly scheduled trains without touching Metra's peak operating windows.

CP-53/KCS/39, Vol. I, at 180-81. Likewise, Applicants later state that:

CPKC's ability to avoid conflicts with Metra's operations during peak periods will be improved by the additional capacity the Transaction will bring between Davenport, and the west end of Metra's MD-W line. The additional sidings, including one being added west of Randall Road, will support the staging of CP's freights so they can be moved towards Bensenville when least likely to create a conflict during Metra's peak periods. Elphick R.V.S., at ¶¶ 22-25.

Id. at 203. Metra has documented how CP's current practices demonstrate that it is unable to dispatch trains within these slots to avoid interfering with Metra's traffic, contrary to CP's claims that there is adequate capacity on the lines. Applicants' conclusions without evidence raise Metra's concern—that Applicants will continue to use double tracking and additional crossovers to dispatch Metra trains around slow freight trains occupying Metra's tracks, slowing down Metra trains or risking passenger safety by requiring them to unnecessarily cross tracks to board on the “wrong” side of stations. Applicants' Rebuttal characterizes CP's current and proposed use of Metra's double-tracked line as “flexible” and “least likely to create conflict” when in fact

CP's practices unnecessarily create significant disruption for Metra's service. As demonstrated in Metra's testimony, there are better solutions that CP ignores, METR-10, at 8-9.

To support their claims of no impact on MD-W, the Rebuttal, without competent evidence, indicates that there will be improvements at Bensenville Yard:

CP is embarking on a major reconfiguration of Bensenville Yard that will dramatically improve the ability of this facility to receive and depart trains efficiently. See Reply Verified Statement of Nick Walker ("Walker R.V.S.") at ¶¶ 54-58; see also Elphick R.V.S. at ¶¶ 29-38. The major reconfiguration of Bensenville Yard will eliminate or reduce the problem of trains doubling or tripling out of yard, which accounts for many of Metra's "complaints" and will improve the handling of intermodal (and automotive) traffic, allowing trains to move directly into the yard and eliminating moves to or from Schiller Park. See Elphick R.V.S. at ¶¶ 33-34. As such, CP expects the reconfiguration will greatly improve the performance of Metra's trains on MD-W. See Walker R.V.S. at ¶ [58].

CP-53/KCS-39, Vol. I, at 183. *See also id.* at 172. The proposed reconfiguration of Bensenville Yard will not alleviate the central problem—poor dispatching decisions. For example, Metra has provided ample evidence that CP regularly dispatches freight trains into and out of Bensenville Yard when crews are not prepared to receive them. *E.g.*, METR-7, Ex. B, V.S. Oppenheim at 11, Ex. B-2 at 41, 317, Ex. D-1. CP also conducts crew changes on Metra's lines at Bensenville. *Id.*, Ex. B, V.S. Oppenheim at 11, Ex. B-2 at 48, 317, Ex. D-1. CP can manage its traffic flows and train lengths to fit current yard configuration, but it simply chooses to exercise self-fulfilling efficiencies over minimizing impact to Metra (Owner). Supplemental Verified Statement of R. Oppenheim ¶ 5, attached as **Attachment B**.

Applicants argue, contrary to evidence, that the proposed new trains using Bensenville are not the "problem" trains that regularly block up Metra's mainline there:

Metra complains that a 'typical example of CP-caused delays' occurs when CP makes a crew change on mainline tracks outside of Bensenville Yard. As explained by Mr. Elphick., to the extent this occurs, it is usually for trains coming from Milwaukee on the MD-N Line seeking to enter Bensenville Yard at Tower B17, which cannot enter yard tracks in a fluid manner from that direction. Elphick R.V.S.

at ¶ 44. None of the new CPKC trains fall into this category, and in any event CP is working to eliminate the need to make crew changes on mainline tracks for its existing trains as well.

CP-53/KCS-39, Vol. I, at 201-202. Applicants further incorrectly state:

Metra's confusion may stem from the fact that Applicants' Operating Plan showed train count increases between Tower B17 and Tower B12. However, this was simply because trains were assigned to that segment if they were entering or departing Bensenville Yard to or from the west. Because Bensenville Yard is geographically situated between Tower B17 and Tower B12, trains moving within Bensenville Yard itself show up as moving between those towers, even though they are not actually operating on the mainline tracks of the MD-W Line east of Tower B17. To be abundantly clear, Applicants do not project any additional daily freight trains to travel on the mainline tracks of the MD-W Line east of Bensenville Yard.

Id. Vol II, Elphick V.S. ¶ 8.

Again, CP is using semantics to cloud facts. Metra has documented CP's current difficulties in entering and exiting Bensenville Yard while occupying Metra's mainline to conduct yard activities such as crew changes and that this will be exacerbated with more trains. METR-7 at 40, 61, Ex. B at 11-12, 23; Dep. of R. Oppenheim at 275-76 (June 9, 2022), attached hereto as **Attachment C**. There is no confusion on Metra's part, only the evidence that demonstrates that CP currently uses this entire location as a mainline yard to stage trains to Bensenville Yard. Further, even though Metra has supported significant investment in capital projects to reduce freight train congestion around the nearby Franklin Park, Metra has not seen significant improvement in service or reduction in delays because of CP's operational practices. Mr. Godfrey explains that current data does not show a substantial benefit to Metra because of the way in which freight trains use the main lines as a yard instead of the yard at Franklin Park. Supplemental Verified Statement of G. Godfrey ¶ 6, attached as **Attachment D**. Applicants' characterization of the specific trains to be added at Bensenville reinforce Applicants' myopic framing of train operations, suggesting that the addition of one type of train could not impact the

operation of another type. With limited yard and mainline space at and around Bensenville, any addition of trains will impact other operations. This will particularly be the case if, as demonstrated by Metra's ample evidence, these trains *are not dispatched properly*.

Applicants further argue that the Transaction may reduce traffic east of Bensenville Yard because of the reduction or elimination of traffic between Bensenville and nearby Schiller Park:

Indeed, train counts east of Bensenville may actually be reduced relative to pre-Transaction levels because, pursuant to the reconfiguration of Bensenville Yard, some trains will no longer need to move between Bensenville and Schiller Park, since the automotive and intermodal facilities at Schiller Park will be consolidated at Bensenville. Id. at ¶ 11.

CP-53/KCS-39, Vol. I, at 172. First, this contradicts Applicants' Amended Operating plan in the short term, which indicates that reliance on Schiller Park will *increase* over the course of construction of the Bensenville Yard reconfiguration. Amended Operating Plan at 74 ("While that project is underway, Bensenville will be supported by CP's nearby Schiller Park intermodal terminal and other CP facilities so as to avoid overloading Bensenville while it is undergoing expansion and reconfiguration to support future traffic levels."). Applicants provide no acknowledgment of the impact this will have during this time, let alone a plan or strategy for mitigating this impact. Moreover, because of its claim that the Bensenville reconfiguration is unrelated to the Transaction, Applicants have provided no information regarding how Schiller Park will be used in the future, although its use will certainly impact Metra's service. For all Metra and the public know, the consolidation of automotive and intermodal facilities at Bensenville Yard could create new traffic into Schiller Park, which could result in additional unforeseen interference with Metra's service.

It is also notable that during this entire proceeding, Applicants provided almost no detail on what improvements will be made by CP to accommodate the increased freight traffic. If

Applicants require additional capacity at Bensenville in support of their Application, they must provide Metra and this Board with any proposed improvements to assess whether those improvements will benefit or hamper Metra operations. Without facts, neither Metra nor this Board can take on faith Applicants' assurances that these hidden improvements will be the magic bullet for a yard in the middle of Chicago with significant physical layout challenges.

B. Applicants misstate the increase of freight traffic due to the Transaction on Metra's MD-N Line

In their Amended Operating Plan, Applicants omitted references to "organic" traffic increases that they projected in their original Application. Applicants now admit this:

Applicants' original Operating Plan showed an average of 0.9 additional line-haul freight trains to that segment to account for organic growth on the system unrelated to the Transaction. Applicants' Amended Operating Plan clarified that there is no Transaction-related train count increase for the MD-N Line. Elphick R.V.S. at ¶ 13.

CP-53/KCS-39, Vol. I, at 173.

While Applicants estimate the Transaction will lead to a *small amount of additional carloads on the MD-N Line*, that additional traffic will be handled in existing trains.

Id. at 173 (emphasis added).

The changes between data provided in Applicants' original Application and Amended Application indicate that Applicants are silent on increases in traffic on MD-N. Compare CP-25/KCS-13, Operating Plan, App. A at 2 (showing a change from 11.1 to 12 trains a day due to "organic growth"), with CP-47/KCS-34, App. A at 3 (stating 11.81 base plan train count). Applicants now profess that the Transaction will result in additional carloads that Applicants characterize as a "small amount of additional carloads":

More concerning, Metra's evidence, including its documented experience and RTC modeling, indicates that MD-N will see additional freight trains from capacity issues on the Marquette Subdivision west of Chicago, contrary to the following statement:

Train counts on the MD-N Line in fact *may* decline as a result of the Transaction, as bulk trains that might have previously moved via the MD-N Line to interchange in Chicago are more likely to move via the Marquette Subdivision for movement on the former KCS portions of CPKC's system south of Kansas City.

CP-53/KCS-39, Vol. I, at 173. However, when the Marquette Subdivision's single track has experienced issues, there is currently considerable increase in traffic on MD-N. That single track's issues do not disappear with even more train traffic.

C. Applicants mischaracterize design characteristics and serious safety issues at Metra's passenger stations

Applicants discount Metra's demonstrated safety concerns as follows:

On the merits, however, Metra's assertions about safety are unfair and inaccurate. Metra does not mention that most Metra stations are designed such that passengers must cross tracks at one end of their commute or the other (e.g., between the station parking lot and the inbound or outbound platform).

CP-53/KCS-39, Vol. I, at 203.

The reality here, however, is that CP's dispatching fiasco requires passengers to cross tracks at the last minute or at unexpected times, at places that are not designated for crossing, or in circumstances where passengers may not be expecting to have to look for a train in a particular direction. CP ignores Metra's documentation reflecting actual events where passengers' safety was put at risk by unexpected oncoming freight trains or freight trains blocking passenger access. The fact that stations are designed for passengers to cross in certain places in a predictable manner has no bearing on the issues that CP's dispatching and operations create.

Applicants argue that forcing passenger trains to use the "wrong" side of the tracks is efficient:

Prohibiting the use of both tracks would interfere with fluid operations and sacrifice capacity and cause unnecessary delays. Walker R.V.S., at ¶ 44. Indeed, Metra itself

has advocated for adding crossovers on the MD-W line, meaning that Metra necessarily supports the use of both tracks, not just the “right” one.

CP-53/KCS-39, Vol. I, at 204. Metra works to decrease the chance of a human being struck by a train. Metra has provided evidence that its customers on a regular basis – at least several times a week, sometimes several times in one day have been blocked from getting to trains due to their trains being on an opposite platform with a freight train on the Metra train’s normal track. There are numerous reports of close calls from passengers dashing across tracks to get to their trains while a freight train approached. Metra has provided photos taken of passengers by other passengers who have faced dangerous situations. One instance was captured by one passenger showing a passenger crawling underneath stopped freight trains in reach a Metra train. Metra cannot agree with CP’s approach – Metra’s passengers’ safety, not CP’s careless dispatching practices, comes first.

In fact, Applicants’ Rebuttal underscores why Metra should be granted dispatching rights: CP’s dispatches trains in a dangerous manner for the convenience of its freight movements and without even any evidence that it is ultimately necessary. *See* testimony of R. Oppenheim, submitted in Metra’s reply comments, METR-10 at 8-9, Attachment B at 198-204, 228-30, 241-59. Mr. Oppenheim regularly explains to CP dispatchers and, in his deposition to Applicants’ counsel, how CP could improve use of *both* tracks without interfering with Metra’s regularly scheduled alignment at stations. *See id.*

CP asserts that it will continue this practice and that human safety is not its concern:

And there is nothing unsafe about this practice. Walker R.V.S., at ¶ 43. Metra’s stations are equipped with loudspeakers that provide advance announcements regarding arriving trains and the tracks they will be on, giving passengers ample time to get to the correct platform. It is standard operating procedure for trains to enter the station at slow speeds to ensure they can stop if needed to avoid pedestrians crossing the tracks at the last minute. If Metra viewed these practices

as unsafe, most Metra stations would not be set up to cause commuters to cross tracks “on a regular basis.”

CP-53/KCS-39, Vol. I, at 204-205. Mr. Oppenheim explains why the loudspeaker system Metra uses at stations is not a better solution than simply not creating the issue initially. He notes that passengers, when coming to the station, often wait in their vehicles and will not hear announcements. Attachment C, Dep. of R. Oppenheim at 152. Further, some passengers do not speak English and cannot understand the message. *Id.* Finally, many passengers simply do not register the message until too late. *Id.* at 153-154.

CP’s dispatching decisions jeopardize Metra’s passengers’ safety, and this will be exacerbated under the Transaction.

D. Applicants’ “corrections” to Metra’s RTC modeling are deceptive and inaccurate

Metra has not had sufficient time to study the extent of CP’s tardy RTC submission. However, a preliminary review demonstrates that CP’s modeling is severely inaccurate and misleading. Applicants state, for example, the following:

Mr. Crowley’s simulation omitted infrastructure causing results to deviate wildly from what would occur in the real world. See *id.* at ¶¶ 46, 50. Figure 12 below catalogs the most significant omissions. On the Marquette subdivision, along the Mississippi river, Mr. Crowley omitted key sidings that made it impossible for CP trains to operate in the way they do in the real world. This resulted directly in Mr. Crowley’s incorrect conclusion regarding how CP would have to route its trains.

CP-53/KCS-39, Vol. I, at 177. See also *id.* at 179 (“Mr. Crowley’s simulation completely omitted planned infrastructure changes to Bensenville Yard which, will contribute to smooth operations on the MD-W Line. See *id.* at ¶¶ 29-38, 50.”) First, the “garbage” used to prepare Metra’s model was supplied by Applicants in their answers to Metra’s discovery requests. CP-53/KCS-39’; see Reply Verified Statement of Raymond A. Elphick, Exhibit A – CP RTC

Report, at 4 (“The quality of the results produced by RTC modeling . . . is entirely dependent on the quality of the input. . . . ‘garbage-in, garbage-out.’”).

Applicants criticize Metra’s modeling for using actual train data, rather than aspirational schedules without demonstrating that scheduled trains have any consistency:

Mr. Crowley’s RTC Simulation incorrectly modeled CP freight trains by hard-coding *actual* departure times from the week of April 13, 2021, rather than using *scheduled departure times*, and allowing RTC’s logic to dispatch trains, seriously contradicting real-world practices and eliminating the randomness of real-world operating events. Elphick R.V.S. at ¶ 50.

CP-53/KCS-39, Vol. I, at 178 (emphasis added).

Similarly, Applicants criticize Metra’s modeling for incorporating actual delays in a normal, representative modeled period:

Metra’s RTC model was forced to incur actual delay values from the April 2021 time period, which drives the simulation to add delay over and above that incurred through its natural dispatching logic.

Id. at 178-179. Applicants’ position that accuracy will be somehow improved by assuming no delays is unrealistic and undermined by the actual data. Rather, Metra’s experts carefully selected a period that was representative of CP’s normal operations.

Applicants’ also try to justify their rudimentary modeling accompanying their initial filings:

Mr. Crowley criticizes Applicants for using a “spreadsheet analysis” (i.e., a mathematical formula uses to estimate capacity) instead of an RTC model,²⁶⁷ yet the *TRB report Crowley cites acknowledges this type of analysis is entirely appropriate for use on single-track segments*, like the Marquette Subdivision.

Id. at 179 (emphasis added). However, Metra’s lines are *double tracked*. The fact that one portion of a model is single tracked does not justify use of this inappropriate method. This is another example of a “garbage in” analysis by CP.

Applicants assert that they have “corrected” Metra’s modeling, rather than more accurately stating that they manipulated the results:

CP’s operating team, assisted by consulting experts with extensive expertise in RTC modeling, corrected all of these errors, and re-ran the RTC model. Elphick R.V.S. at ¶ 51. As Elphick explains, once the RTC model is corrected, the RTC model shows that there will be no issues on the Marquette Subdivision, Elgin Subdivision, or any other segment of the CPKC system that will have an effect on Metra. *See id.* at ¶ 52. Indeed, the results of CP’s simulation prove both that the current infrastructure on the Marquette Subdivision supports existing freight volumes, and that the capital improvements to that subdivision that CP’s plans will support continued fluidity with the addition of post-Transaction freight volumes. *See id.*

Id. at 179. Metra’s experts have begun a review of Applicants’ materials and, even at this early stage of review, have found material omissions and manipulation: Sur-Reply Verified Statement of T. Crowley and R. Mulholland at 4-6, attached as **Attachment E**. For instance:

- CP used timetables as the source for the siding lengths in its model, even though it is industry standard to use the more accurate track chart data. *Id.* at 4
- CP used scheduled departure times, rather than actual departure times that Metra used based on actual data in 2021. Applicants do not provide support for their assertions that using scheduled departures is accurate. In fact, actual data brings the model closer to real-world conditions. *Id.*
- CP failed to include “organic” growth, foreign trains, or normally occurring delays. *Id.* at 4-5. Applicants continue to exclude foreign carrier traffic in their restated RTC simulations.
- CP changed the Base Case Metra traffic to reflect the 2019 pre-Covid schedules resulting in a mismatch between the passenger (2019) and freight (2021) time periods in the Base Case. This change serves to dismiss one of Metra's significant core claims, that whatever capacity may be available at present must be apportioned to

accommodate both CP volume growth *and* Metra volume growth. CP's adjustment serves to fudge the Base Case numbers to make the future volume change appear less significant. *Id.* at 5.

Applicants complained about Metra claims that "CP will likely reroute Marquette traffic via Chicago." Metra's model did not reroute these trains, but simply left them out of the model (another instance where Metra's modeling was favorable to CP). *Id.* at 6.

Reliance on Applicants' flawed modeling could lead to terrible results in the Chicago region. Metra seeks to have a greater understanding on whether such flawed modeling has been used in other settings or simply here, to improperly achieve a goal at the expense of Illinois taxpayers.

E. Applicants improperly seek to hide CP's status quo dispatching and operational failures, which are critical to understanding the impact of the Transaction on Metra's service

"History repeats itself, but in such cunning disguise that we never detect the resemblance until the damage is done."⁵ Applicants aver that CP's "pre-Transaction" history of mismanaged dispatching and operational performance on Metra's lines should be ignored:

Metra's Comments attempt to give weight to its unfounded concerns about the Transaction's impact by dragging CP's pre-Transaction performance through the mud and suggesting that CP will be callously indifferent to the impacts of its new trains on Metra's operations. There is absolutely no valid foundation for this accusation.

CP-53/KCS-39, Vol. I, at 183. *See also id.* at 169 ("Equally important whatever gripes Metra may have about the pre-Transaction world cannot form a basis for imposing conditions."); 200 ("[T]he entirety of Metra's case boils down to a laundry list of pre-Transaction grievances and efforts to re-write the governing contracts and fundamentally alter the pre-Transaction relationship

⁵ Sydney J. Harris, *Clearing the ground*, Houghton Mifflin Harcourt 24 (1986).

between CP and Metra.”); 203 (“Metra asserts that CP ‘regularly dispatches Metra trains on different mainline tracks from the ones that Metra has identified for use by its passengers heading in a specified direction.’ . . . Again, this is a pre-Transaction complaint.”); 205 (“Metra dredges up past discussions *from 2019*, unrelated to this Transaction, in which Metra and CP did not reach agreement to add additional non-peak Metra trains.” (emphasis added)).

In essence, Applicants are stating “pay no attention to the man behind the curtain,”; *i.e.*, asking the Board to look away from:

- Continual and longstanding history of dispatching decisions that favor freight trains over Metra trains and unnecessarily delay Metra’s service.
- Well-documented CP’s dispatching decisions that cause unsafe conditions for passengers at Metra’s stations.
- A history of denying Metra the opportunity to change service on its own lines according to changing ridership trends and to pursue new ridership opportunities.

These behind the curtain issues are front and center in determining CP’s plan moving forward and are relevant.

Applicants similarly selective and disingenuous statements that it had better operational outcomes at other times omits relevant facts such as that at those times, freight trains operated at night. Thus, statements such as the following are either dishonest or disingenuous, or both:

It bears mentioning that Metra’s MD-W Line historically hosted many more freight trains than it does currently, and more than CPKC will operate post-Transaction. During the 1980s and 1990s, Mr. Oppenheim acknowledged at his deposition that the MD-W Line hosted between 13-14 trains on the low end and 15-16 trains on the high end depending on the number of bulk trains per day.

CP-53/KCS-39, Vol. I, at 182. Indeed, Mr. Oppenheim told Applicants that the night trains posed less issues. Attachment C, Dep. of R. Oppenheim at 25-26. Experience shows, however, that CP will not dispatch its trains at night.

Applicants assert that they consider existing conditions, but omit critical inputs:

In assessing whether a local train, foreign train, yard train or work train has an impact on capacity, CP anchors itself on methods and measures of capacity utilization. CP then builds on its understanding of local operations, yard and track maintenance activities, foreign train activities and how long it takes to traverse segments or diamonds. CP also enlists local experts to understand the nature and cause of operational interference as well as what can be done to remedy that interference. CP also calls upon its past experience on its own lines. Notably, in the case of the MD-W and MD-N Lines, CP considered the fact that these lines historically had heavier freight operations than there are currently.

CP-53/KCS-39, Vol. II, V.S. Elphick ¶27. If CP “anchored itself” in sound methods, “enlist[ed] local experts”, and “considered . . . historical[]” use, it would have presented its own RTC analysis from the beginning, consulted Metra early (or at all) in developing its Operating Plan, and would factor in the existing interference that it causes to Metra’s service on these lines. Indeed, Metra has already had a taste of the increase in interference to be expected from the Transaction with current interference from the new “interline” intermodal train operated between KCS and CP. Attachment A, V.S. Cork ¶ 6.

Again, Applicants rely on aspirational improvements to Bensenville Yard to support the Application while asserting that these improvements are “unrelated” to the Transaction. *Id.* at 182. Metra has addressed these statements above.

Applicants inaccurately assert that CP “does not schedule freight trains during Metra peak periods, and the new CPKC trains that Applicants anticipate will similarly be scheduled during the extensive periods of the day when they will not get in the way of Metra’s passenger trains.” *Id.* at 201. Indeed, CP trains regularly use Metra’s “peak periods” and Metra confirmed

that in its initial evidentiary submission. METR-7, Ex. D-1; CP-53/KCS-39, Vol. I, at 188 (indicating “one [peak period] delay every eight business days” using a very restricted definition of delays, as discussed further below).

F. Applicants provide misleading statistics regarding Metra’s on-time performance

Metra’s on-time performance metrics address the initial departure and arrival at the final terminal. They do not account for mid-trip delays which may not delay the final destination, but absolutely keeps riders from timely rides in mid-trip. Applicants’ will not acknowledge this when they state:

According to Metra’s own data, CP dispatching and freight operations are almost always successful in avoiding any delay to Metra trains. Walker R.V.S., at ¶¶ 32-35. Metra’s allegations that CP is responsible for “continual” and “routine” delays²⁷⁶ to Metra trains on the MD-W Line, and that CP’s dispatching leads to “regular – weekly, and in some cases daily – interference with Metra’s peak and non-peak train service,”²⁷⁷ are simply not supported by Metra’s own data.

CP-53/KCS-39, Vol. I, at 184.

In stating this, CP addresses exclusively Metra OTP statistics, which only measure initial and final destinations plus an additional tolerance of 5 minutes or 15 minutes when Construction Schedules in effect (Approximately April-October most years). Most schedules include additional time at the end of the run, not portraying the experience of the majority of passengers who detrain at intermediate stations, that is, significant delays due to freight train interference with the train they were riding still being considered “on time” statistically. OTP statistics do not measure intermediate station delays, blocking passenger and vehicular crossings, or dispatching decisions that require Metra passengers to cross tracks and dodge or climb under freight trains. CP ignores Metra’s precision-passenger railroading in doing so. CP has ignored Metra detailed explanation of CP’s negative effect on Metra operations. **Attachment B**, V.S. Oppenheim ¶ 7.

While OTP is one metric in evaluating Metra service, CP fails to address here, or in regular meetings with Metra staff, the global issues that CP causes to Metra service daily.

Failing to acknowledge all of Metra's metrics, Applicants state:

Metra states that its goal is to achieve percent on-time performance, reflecting its acknowledgement that perfect performance is unachievable because "there are scores of unpredictable variations from those perfect conditions that can have small but cascading impacts on Metra's schedule." With over many dozens of trains running across the line Metra shares with CP every day, Metra's 95% on-time performance goal implies that one would expect a meaningful number of delays every week, month, and year.

CP-53/KCS-39, Vol. I, at 184. To be clear, CP is not entitled to interfere with Metra's trains *at all* under its contractual obligations yet it can and does interfere with dozens of trains, monthly. Through its discussion and graphs, *id.* at 185, 186, Applicants suggest that they are entitled to delay Metra's passengers up to five percent of the time, or roughly two dozen trains a week on the Milwaukee District lines.

In any event, Metra's data *does* show weekly and even daily delays caused by freight train interference, when not excluding delays that should not be excluded, such as cascading delays and non-peak trains. Metra's concerns are amply supported by the more than 600 pages of emails detailing communications between Metra and CP over six years. This included data indicating that CP caused delays to an average of 16 Metra trains per month. METR-7, Ex. D-1 at 1. In order to respond to Applicants' misleading graphical representations, Metra has prepared a graphical representation of previously submitted data from 2020 and 2021 regarding CP-caused delays on Metra's Milwaukee District lines. See **Figure 1**, below; **Attachment D**, V.S. Godfrey ¶ 17 (depicting data provided in METR-7, Ex. D-1). The underlying data for this representation, shown on the following page, depicts a calendar for 2020-2021 reflecting days (in red) on which

CP caused a Metra train to be delayed at least once. The shade of red and label depict the number of delays experienced that day (the darker the shade, the larger the number).

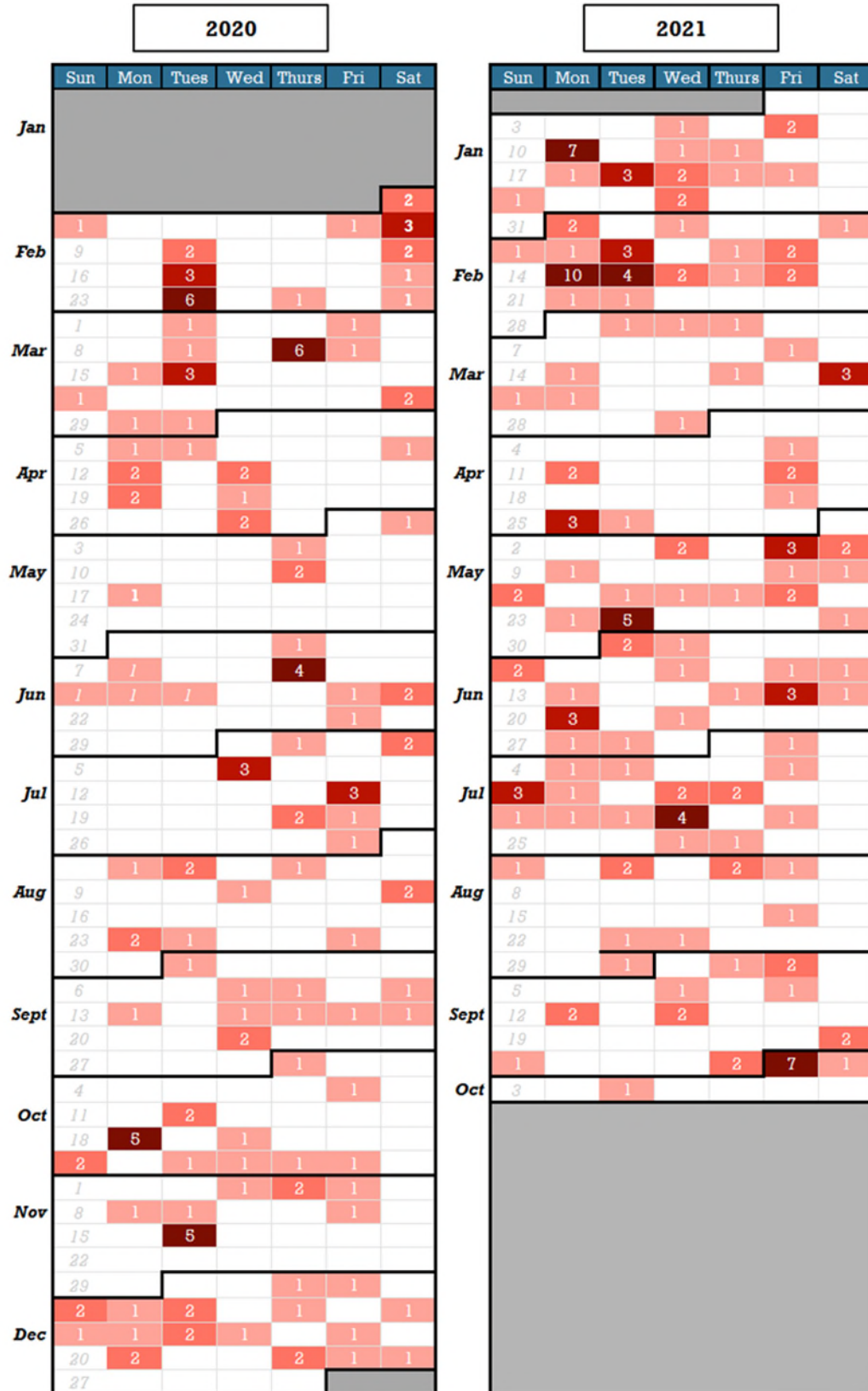


Figure 1

The data submitted by Metra after its initial March 15, 2022, comments corroborate this constant interference, showing that CP has interfered with a Metra train 59 times between Metra's initial comments submitted on March 15 and its Reply submitted on July 12, 2022. METR-10, Attachment D.

Incredibly, Applicants argue that cascading impacts due to CP's dispatching and operational decisions, *i.e.*, that one bad decision can result in a series of delays for Metra trains, should be disregarded in assessing the number of bad decisions made by CP's dispatchers on Metra service:

Even the 0.82% figure is an overstatement of CP-caused delays, as it includes "indirect" or "cascading delays," *i.e.*, delays that occur when a train that is directly delayed en route to destination by some event causes another train to be delayed because it uses the same equipment. As a result, a single dispatching decision that causes delay to Metra can result in multiple reported delays. "Direct" delays are the better measure of how often CP's dispatching decisions may have caused a Metra train to be delayed, as Mr. Godfrey confirmed.

CP-53/KCS-39, Vol. I, at 186-187. Indeed, CP's position is contrary to the passenger business model and Metra's customers do not agree with CP's position. In his deposition, Mr. Godfrey testified that a single bad decision by a CP dispatcher has larger ramifications. Dep. of G. Godfrey at 43 (June 8, 2022), attached as **Attachment F**. Further, Mr. Godfrey disagreed with CP's position that only direct delays "are a better measure of how often CP's dispatching decisions may have caused a Metra train to be delayed." *Id.* Thus, all of Applicants' resulting statistics and graphs relying on CP's premise are therefore inescapably flawed. CP-53/KCS-39, Vol. I, at 188, 190, 191, 192, 193, 194.

Applicants' discussion, graphs, and statistics are misleading and attempt to re-focus the Board from considering the impact of the Transaction on Metra's essential service. For instance,

the verified statement of Mr. Walker discusses what Metra’s concern is not about—trains that are not delayed:

This presentation is incredibly misleading. First of all, the only “delays” presented were those related to CP freight trains. As Mr. Godfrey testified at his deposition, those delays were only 12 percent of the delays that Metra trains, and passengers, incurred. The balance – i.e., the vast majority (88 percent) – were the result of causes having nothing to do with CPs freight trains. These causes include Metra equipment issues, delays loading and unloading passengers, and many other causes.

CP-53/KCS-39, Vol. II, V.S. Walker ¶ 19. Metra focuses on avoidable delays caused by CP because that is what will be affected by the Transaction. Applicants’ attempt to obscure what is important to understanding the impacts of this Transaction is similar to their efforts to exclude “no[t] Transaction-related” facts and circumstances, such as Metra trains on Metra lines and “organic growth” on MD-N.

CP admits to delays, even while ignoring non-peak Metra trains and cascading delays (which also are entitled to non-interference):

Metra alleges that CP dispatchers “regularly” prioritize freight trains ahead of Metra trains during agreed “peak” periods during the morning and afternoon commuter rush hours. Metra’s data undermines its own argument. As Figure 18 shows, again focusing on the trains that suffer “direct” delays due to freight train interference, CP performs incredibly well in dispatching Metra’s peak-period train. In fact, only 0.57 percent of peak-period trains realize direct freight train interference delays, amounting to 126 total delays over the course of four years, or about *one delay every eight business days*.

Id., Vol. I, at 188 (emphasis added). CP superimposes a different business model onto Metra that will denigrate Metra’s business, when it boasts of “one delay every eight business days,” which excludes cascading delays, off-peak delays, delays at intermediate stations, and interferences caused by re-tracking Metra trains.

Applicants’ assertions that CP performs better than other freight railroads in terms of on-time performance reveals how low Applicants set the bar for themselves:

Other Metra data confirm that Metra performs well on the CP-dispatched MD-W Line relative to the lines used by Metra that are dispatched by other freight railroads. Only 21.3% of delays on MD-W from 2016 to 2021 were attributed to CP. This is a lower percentage of delays than on the nearby UP-West line or the BNSF line, where a greater portion of delays were caused by those other “foreign carriers.” Indeed, though Metra seeks to portray CP as though it were a particularly bad performer, Metra’s witness Rodriguez testified that Union Pacific caused the most freight train interference with Metra’s trains, or as Mr. Godfrey described it: Union Pacific is “struggling tremendously right now.”

Id. Vol. I, at 190. First, this Transaction is not about UP. The fact that freight trains account for one-fifth of delays to Metra’s trains on Metra’s lines is not a job well done. Also, Mr. Rodriguez actually testified that CP has the second worse record.: “[I]f you are asking me for a total, the second highest total [of delays] would be CP. Q: Total – ‘total’ meaning? A: Last two years.” Dep. of D. Rodriguez at 59:5-7, 59:15-17 (June 9, 2022), attached as **Attachment G**.

Overall, Applicants constantly mischaracterize the data and Metra’s testimony. For example, Applicants state:

The more we whittle away delays that Rodriguez unfairly attributes to CP, the more Rodriguez’s data paints the same picture – that CP has done a good job dispatching Metra’s lines.

CP-53/KCS-39, Vol. I, at 194. Applicants conveniently omit citation to Mr. Rodriguez’s deposition to support this assertion. **Attachment G**, Dep. of D. Rodriguez at 96-117. To the contrary, in context, Mr. Rodriguez is asked in one case to clarify whether a dispatching decision in one case caused a cascading delay, to which Mr. Rodriguez agrees. *Id.* at 117:7-12. Applicants’ callous disregard for the impacts experienced by subsequent trains and the passengers that rely on them only confirms Metra’s concerns about Applicants’ indifference to the impacts of the Transaction on Metra’s passengers.

Applicants further mislead by averaging recorded delay times over all Metra trains, apparently in an attempt to minimize delay times:

On the MD-W Line, which is the only line CP and Metra share where train counts will increase as a result of the Transaction, Mr. Rodriguez's data identifies 273 freight-caused delays for a total of 2,394 minutes of delay. Given the 19,914 total Metra trains that Metra operated on the MD-W Line during that period, this works out to just 7.2 seconds of delay per train

CP-53/KCS-39, Vol. I, at 192, 194. This statistic is meaningless because by definition, OTP delays are at least six minutes at final destination, and likely longer at intermediate stops. It therefore makes no sense to average delay time among trains that were not delayed at all. The harm is to passengers actually delayed, not those who never experienced a delay. It serves no purpose to allocate such a delay among a broader range of people who were not impacted—similar to averaging Michael Jordan's basketball statistics with that of his teammates to provide insights about player performance from the resulting figures. Applicants try to further muddy this statistic by once again excluding cascading delays:

25 of these delays were attributed to cascading delays which, as discussed in this section, should be excluded when properly assessing the number of incidents where CP freight trains or dispatching decisions caused a delay.

Id. at 192. *See also id.* 194. As discussed above, it makes absolutely no sense to remove cascading delays from the analysis. Passengers on a delayed train experience the delay, no matter whether it was caused by a dispatching error that directly affected an earlier train, or whether CP chose to put a freight train in front of the one those passengers are riding. Once again, Applicants accompany their faulty analysis with meaningless graphs. *Id.* at 193.

G. Metra would be in a better position than CP to dispatch Metra's lines

Applicants incorrectly argue that Metra is not equipped to dispatch its own lines, when Metra's experience shows that in fact it is capable, as indicated in its July 12 Reply. METR-10 at 7-10. Applicants point to lines over which Metra operates that are dispatched by their Class I freight owners:

It is no coincidence that the Metra lines that see the most freight traffic are uniformly dispatched by the freight railroads operating over those lines: BNSF, UP, CN, and CP. Walker R.V.S., at ¶ 69.

CP-53/KCS-39, Vol. I, at 213. The obvious difference is that those other railroads own the lines; Metra owns the Milwaukee lines. Having a freight railroad dispatch passenger trains on tracks owned by the passenger railroad is rare if not unique in this country.

Applicants also discount Metra's extensive experience dispatching both passenger and rail traffic on other lines and call into question Metra's ability dispatch at night.

Metra's dispatchers, on the other hand, only have limited experience dispatching freight and passenger trains on Metra's Rock Island Line and portions of the Southwest Service Line, where freight traffic levels are very light. . . .

Id. at 213. Metra staff have ample experience dispatching passenger and freight traffic, and in fact dispatch portions of the MD lines under CP's oversight. METR-10 at 7-8.

In his verified statement, Mr. Walker disparages Metra's ability to dispatch without evidence to support his statements by stating:

Finally, there is good reason to be concerned that Metra does not appreciate the greater complexity associated with dispatching freight operations relative to scheduled commuter trains. . . . Moreover, in contrast to scheduled commuter trains, freight trains do not adhere to schedules as precisely, must be received by yard tracks that are available to handle them, must meet one another at sidings that are the proper length to handle them, operate at more varied speeds, and encounter a far more diverse array of potential conditions (broken knuckles, overheated bearings, etc.) that disrupt operations on lines of road. Metra's dispatchers would need to develop the experience and expertise to handle all of these conditions, but would start out far behind CP's dispatchers on the learning curve.

CP-53/KCS-39, Vol. II, Walker V.S. ¶ 67. Metra trains have the same General Code of Operating Rules ("GCOR") rule book and deal with the same protocols, procedures, and concepts in its training, day to day operations, and rule books. Metra's train movement staff is equally competent and equally experienced under train movement protocols. **Attachment D**,

V.S. Godfrey ¶ 8. Indeed, Metra employees were formerly CP employees and are well aware of how to dispatch. Mr. Walker is wrong when he states that:

While Metra dispatchers have some experience dispatching a handful of freight trains on other lines in the Chicago area, they lack the experience of CP's dispatchers. . . . This inexperience would inevitably jeopardize efficient rail operations on the lines CP and Metra share, as well as disrupting CP's freight operation far beyond the boundaries of those lines.

CP-53/KCS-39, Vol. I, V.S. Walker ¶ 68. Many current CP Dispatchers entrust the Metra A5 and B12 Dispatchers with handling and making train movement decisions, particularly when they are tied up or distracted by activities on non-Metra lines. Attachment D, V.S. Godfrey ¶ 10.

Applicants' suggestion that Metra's staff agrees with Applicants' statement that CP is somehow in a better position to dispatch is completely belied by Metra's actual testimony:

Mr. Godfrey admits Metra's dispatchers lack the experience looking at the broader CP network on a day-to-day basis that is necessary to make appropriate dispatching decisions.

CP-53/KCS-39, Vol. I, at 214 (citing Godfrey Dep. Tr. at 83:25-84:21; 122:2-23.). Nowhere does Mr. Godfrey make any such statement. In fact, Mr. Godfrey's point was that CP's failure to communicate with Metra and to allow Metra insight into what is occurring on its network, which is entirely different than the experience Metra has with the other freight railroads with which it successfully coordinates on a regular basis, is a huge obstacle to the kind of successful operating partnership that Metra enjoys on other lines in its system. **Attachment D**, V.S. Godfrey ¶ 12.

In contrast, CP's only experience dispatching passenger service is on Metra's lines, and Metra is completely dissatisfied with CP's dispatching. Metra, on the other hand, is well-versed in dispatching both passenger and freight traffic in the Chicago area. Not only are Metra dispatchers already familiar with and conversant with CP operations beyond the Metra boundaries, they would have access to overview capabilities for these territories. Metra

dispatchers and chief dispatchers would brief with their CP counterparts to ensure that no misunderstandings took place regarding the handling of CP traffic on Metra tracks. It must be remembered that Metra has its own representation in the Chicago Integrated Rail Operations Center (“CIROC”), whose members obtains condition reports on all of the railroads several times each day. The CIROC office that deals directly with coordinating freight movements with all of the freight carriers in the Chicago Terminal is located in the same building and across the hall from the Metra’s Dispatching office. Frequent interaction between Metra Dispatching staff and CIROC staff takes place 24/7. The Metra Dispatching office is already closely attuned with all freight Operations in the Chicago Terminal that affects it. This includes UP, BRC, CSX, NS, IHB and others. Accordingly, Metra is in a far better position to facilitate these operations than CP. Ironically, CP is the only major freight carrier in the Chicago Terminal that opted not to have a representative participating in CIROC. Attachment D, V.S. Godfrey ¶ 12.

Applicants argue that Metra does not have the same perspective that CP does of CP’s system:

CP dispatchers, who are trained and experienced to operate around the clock and are familiar with the complexities associated with dispatching freight trains alongside passenger trains, by placing them with Metra dispatchers, who are primarily focused on the operation of passenger trains between the early morning hours and late evening hours, would create a host of potential issues.

CP-53/KCS-39, Vol. I. at 213.

Walker’s Figure 13 illustrates how the different perspectives of CP and Metra’s dispatchers would handicap efficient operation of the MD-W and MD-N lines. Metra’s perspective would be focused on Metra’s own lines and operations, and thereby sub-optimize the movement of all trains across the network. This would yield a greater potential to disruption to freight and passenger operations in the Chicago terminal, and beyond.

Id. Vol. I, at 215.

Putting aside the fact that CP likewise does not have the same perspective as Metra regarding Metra's service, Applicants apparently do not realize that more focus on this critical area is a good thing, and that Metra's more attentive focus on this area would benefit Applicants and the system more generally. CP's Elgin Dispatcher not only dispatches Metra's Elgin Subdivision during overnight hours, but also handles the D&H territory as well as several lines toward the Canadian border. CP's C&M Dispatcher picks up the territory from Milwaukee to Portage during overnights as well as on weekends. Metra Dispatchers could concentrate on the Metra owned and maintained lines during this time period and ensure that everything was ready for Metra service to resume in the morning. CP freight traffic in the Chicago Terminal would receive *more* attention with Metra dispatching than it does with CP Dispatching. **Attachment B**, V.S. Oppenheim ¶ 10. It is no wonder that CP causes all sorts of issues on Metra's lines, given that its priorities are elsewhere and capacities limited by its geographical scale of operations.

Applicants suggest that Metra does not have the same information available to it that CP does. In fact, Metra has or could have access to the same broader perspective. As Mr. Oppenheim has testified, he has or could have the same access to information in his office. **Attachment C**, Dep. of R. Oppenheim at 242-43. Nothing, except CP's obstruction, prevents Metra and CP coordinating these issues. Metra staff has deep experience on the lines it shares with CP, more so than any CP staff, and Metra staff already provide solutions that CP could implement. Mr. Oppenheim provided a number of solutions, including for Bensenville Yard, that could be better implemented if Metra were provided dispatching. METR-10, Attachment B, Dep. of R. Oppenheim at 244-46, 257-59. CP already squanders whatever "advantage" it has in seeing the rest of its network, as indicated by the obstructions it creates on Metra's lines. Having

dispatching more focused on a critical juncture in the network where time is of the essence would benefit both Metra's service and the rail network more broadly.

Applicants infer baselessly that Metra is not equipped and ready to dispatch at night:

Metra does not operate trains on the MD-W and MD-N Lines around the clock, but instead goes dark between the last train of the night at 12:05 am and the first train of the following morning at 4:52 am on weekdays.

CP-53/KCS-39, Vol. I, at 213. Metra staff are more than capable of dispatching at all hours, as is indicated in Metra's testimony. METR-10 at 7, Attachment E at 5. It is curious that Applicants bring up night dispatching, given that CP itself could but does not regularly dispatch at night on Metra's Milwaukee District lines, although this was historically a practice and could help avoid interference with Metra's trains. CP already squanders the broader geographical and temporal perspective it purports to have, as is shown by the bottlenecks that its traffic creates on Metra's lines.

Applicants assert that providing Metra with dispatching would be detrimental to coordinated and efficient dispatching:

With Metra dispatchers responsible east of Randall Road (on the MD-W line) and south of Rondout (on the MD-N line), coordination between CP and Metra would be inherently less efficient and more difficult than coordination between different sets of CP dispatchers who bring a broader network perspective to their decision-making. See, e.g., Walker R.V.S., at ¶ 76 (illustrating how dividing dispatching between Metra and CP would curtail efficiency). Efficiently dispatching these lines requires awareness in real time of conditions on other part of the network well beyond Metra's operational boundaries including not only CP's own lines as far away as Kansas City and St. Paul, MN, and the inner workings of CP's important Bensenville Yard, but also lines controlled by UP, IHB, BRC and others. See Walker R.V.S., at ¶ 72. CP dispatchers have the experience, knowledge, and situational-awareness necessary to coordinate with the rest of the CP network and to juggle these moving pieces. Metra dispatchers almost certainly would not. Walker R.V.S., at ¶¶ 73-82.

CP-53/KCS-39, Vol. I, at 214-215. *See also id.* at 216. Applicants ignore Metra's team's ample experience working cooperatively with Class I railroads throughout its network. Metra and other

railroads operating in the Chicago area commonly share information in order to move traffic between lines dispatched by different entities. For example, Metra already has visibility of the UP lines in the Chicago terminal area (and CIROC is still across the hall). Visibility of territory beyond Rondout is also readily available via Overview. **Attachment D**, V.S. Godfrey ¶ 14.

Applicants also neglect to note that Metra dispatchers actually dispatch the Milwaukee District lines under the oversight of CP dispatchers, and therefore have just as much experience. METR-10 at 7-9. Metra Dispatchers are every bit as capable of coordinating these moves with the CP counterpart who handles West of Randall Road. This is no different than the current arrangement where the CP Elgin dispatcher's territory ends at the end of the Metra territory, and a CP Iowa Movement Director handles the Chicago Subdivision on the other side of Randall Road from Metra's MD-W. The dispatchers handling the Elgin Subdivision and Chicago Subdivision communicate with each other to facilitate these movements. The Metra dispatcher would be able to communicate in exactly the same way. See **Attachment D**, V.S. Godfrey ¶ 14.

Applicants attempt to argue that Metra's peak period service would constitute a challenge to Metra's effective dispatching of its own lines or efficient movement of Applicants' trains:

The disruption would be exacerbated by Metra's peak windows during which Metra dispatchers would refuse access to the MD-W line regardless of whether there was room to move an arriving freight.

CP-53/KCS-39, Vol. II, V.S. Walker V.S. ¶ 76. In reality, Metra Dispatchers would make informed decisions based on an up-to-the-minute assessment of conditions on the Metra territory, taking into consideration such factors as the length of the freight train, the available windows between scheduled Metra trains, the amount of power on the freight train, etc. Metra Dispatchers would not categorically refuse to move a freight train during the peak period, but would be much

more careful than CP currently is in allowing freight traffic on to the territory when the potential for delay and interference are too great. Attachment D, V.S. Godfrey ¶ 16.

Metra successfully dispatches its Rock Island line that includes both freight and passenger trains. Metra coordinates train movements daily. Therefore, the statement below is not truthful:

But to make this work requires a lot of coordination between the CP dispatcher and CP's operating personnel at Bensenville. Long before the outbound Metra train gets to B17, the dispatcher must coordinate with the CP trainmaster and train crew to ensure that the westbound freight is made up, has completed any required brake tests, and is ready to go. The CP dispatcher will be proactively monitoring the activity associated with preparing that freight train for departure – making sure there are no crew issues, no power issues, no miscommunications, no paperwork issues, and nothing else that could delay its departure. Then when the Metra train passes B17, stops to discharge passengers at Bensenville station, and starts to pull out of the station, the CP dispatcher can give the CP freight the green light to proceed so that it reaches the end of Metra's line with plenty of time to spare ahead of the next Metra train (usually an hour later). Without all of this coordination – which could not possibly work as smoothly were Metra responsible for dispatching – this coordination would break down and either Metra would hold CP trains for long periods of time inefficiently, or the risk of freight train interference would increase rather than decrease. This would be particularly counterproductive with the increased number of freight trains that CP anticipates operating over this line as a result of the CP/KCS Transaction.

CP-53/KCS-39, Vo. II., V.S. Walker ¶ 78. Moreover, Metra is aware of CP's operations and has suggested improvements, which CP has ignored. Indeed, Metra dispatching includes CSX, Canadian National, Norfolk Southern, and the BRC. METR-10 at 7-8.

H. Applicants' testimony mischaracterizes CP's previous denial of Metra's request to reinstate service

Faced with Metra's testimony regarding CP's previous denial of Metra's reasonable requests to reinstitute service on MD-N in 2019, Applicants now provide testimony that CP was "not intending to tell Metra" that it could never add trains, even though CP provided no basis for reasonably refusing Metra's request:

Metra's April 2019 proposal to add six weekend trains to the MD-N line on a "trial basis" got caught up in the same discussion with Metra about accommodating the needs of CP, Amtrak, and Metra on this line. Freight operations had changed since Metra had removed those trains from its schedule in early 2018, and as noted the potential need to accommodate increased Amtrak trains also needed to be considered. CP was not intending to tell Metra that it could never add additional off-peak trains to the lines CP shares with Metra. At the time, the weekend trains Metra was already operating on the line were not running at or even near capacity. In requesting to add additional Metra trains, Metra was unable to provide any reason to think there was demand for these additional trains; rather Metra just wanted to experiment. CP was not telling Metra that it could never add additional off-peak trains to the lines CP shares with Metra, but CP felt it could not agree to add these trains without a more involved assessment of their impacts on CP's future operation flexibility and a further consideration of available alternatives.

CP-53/KCS-39, Vol. II., Walker V.S. ¶ 90. Mr. Walker's statements suggest CP has unilaterally crafted some unspoken litmus test for Metra to meet in order to force CP to consider reasonable requests for service changes. Yet Mr. Walker's criteria do not appear in the messages Metra has provided showing CP refused Metra's request. *See* METR-7, Ex. B-4 to B-9. CP now conveniently has no capacity concerns regarding MD-N, and has even found spare capacity to accommodate additional Amtrak service.

Metra's desire to add these trains had absolutely nothing to do with seating capacity or how full the other trains were, as attested to by Metra's staff, *see* **Attachment B**, V.S. Oppenheim ¶ 12. The trains that Metra wished to reinstate were highly in demand by Metra customers who appreciated the convenience of having return options on weekends – many clearly stated that being faced with a two hour wait to return home in the afternoon was enough to make them drive into the city, whereas a one hour wait made the service attractive enough to where they would leave their cars at home. Metra needs to be able to tailor its service to the needs and demands of its customers. Similarly, the reverse commute trains during the week were specifically requested by a large group of businesses in Lake County that vowed to use the

service if those trains were established. A large and identified group of potential new riders had to be turned away due to CP's unreasonable refusal to allow these trains to operate. Being told that Metra could not operate these trains on their own railroad because future needs of CP and Amtrak on Metra's railroad *might* be a problem (they would not be), just added insult to injury.

Attachment B, V.S. Oppenheim ¶ 12.

I. CP's failure to adhere to its contractual requirements will impact this Transaction, and approval without conditions will alter the contractual relationship

Applicants make a number of inappropriate conclusory legal arguments and mischaracterizations regarding the contractual relationship between Metra and CP. While these issues are most appropriately addressed in briefing and should not have been raised here, Metra nevertheless believes a response to a few points is appropriate here. Applicants argue that Metra's request for dispatching amounts to another attempt to alter the contractual agreements it entered into in acquiring the lines (agreements that preserved the status quo), and has nothing to do with Transaction-related impacts:

Metra requests a condition requiring CPKC to transfer dispatching control of the MD-W and MD-N Lines to Metra. Such a request is overreaching and would override CP's longstanding contractual rights without any foundation in harm from the Transaction. Metra's demand is ultimately founded on Metra's pre-Transaction desire to control dispatching on these lines, which it has twice previously brought to the Board in the merger review context, only to be rejected both times. The Board should reach the same conclusion here.

CP-53/KCS-39, Vol. I, at 208. *See also id.* at 169 ("The Board should reject Metra's invitation to impose more extreme conditions that would fundamentally change the contractual relationship between a freight railroad and a passenger railroad, just as it has done many times before.").

Applicants would like this Board to forget that (a) it clearly has the authority and obligation to mitigate impacts resulting from the transaction; (b) that it is not uncommon for

Board conditions to require applicants to enter into new contracts; and (c) that by granting the application without conditions the Board will be materially impacting Metra's ability to assert rights under its existing contract—in effect, the Board would be altering the contractual arrangements regarding CP's use of Metra's lines if it grants the merger.

Applicants argue that the existing contractual relationships supposedly are the norm and preserve the status quo:

The contractual arrangement between CP and Metra governing the MD-W and MD-N Lines originated in the Milwaukee Road's bankruptcy and preserved CP's role as the freight common carrier on these vital lines connecting CP's network with Chicago, as explained in the Reply Verified Statement of Adolph Gameiro. CP's agreements with Metra preserved the traditional control that freight railroads have over dispatching – and that Milwaukee Road had historically when it operated commuter trains. Gameiro R.V.S. at ¶¶ 6-15.

Id. at 209. This statement is misleading and completely irrelevant to putting today's situation in context, where a freight railroad controls dispatching over lines that a commuter railroad owns and operates. As Metra has stated previously, this is a highly unusual circumstance that was not the norm then or now.

To back up their assertions, Applicants submit the verified statement of Adolph Gameiro, Managing Director Interline and Network Strategy at CP. Mr. Gameiro makes numerous incorrect statements, misleading characterization, and legal conclusions which Metra will address in its brief rather than in testimony regarding the adverse impacts of the transaction. However, one statement does merit response now:

By requesting a “binding mechanism” for adding trains, Metra is saying that it should have the contractual entitlement to add trains regardless of the physical capabilities of the infrastructure and the demands placed on that infrastructure by CP's freight operations. In effect, Metra is seeking to extend its peak period windows across the entire day. This concept is fundamentally at odds with the rights CP purchased (and which the ICC authorized and the Bankruptcy Court approved) to increase its freight operations so long as doing so did not interfere with Metra

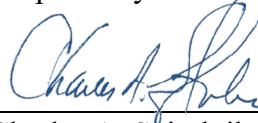
during its peak periods or “unreasonably disrupt or delay” non-peak period commuter trains.

CP-53/KCS-39 Vol. II, V.S. Gameiro ¶ 22. Mr. Gameiro’s hyperbole notwithstanding, Metra’s request is that the Board craft a fair, binding mechanism as one of the many issues within its authority to address in order to ensure that the Transaction does not harm essential commuter rail service in Chicago.

CONCLUSION

For the foregoing reasons, Metra submits these clarifications and corrections to Applicants’ statements and assertions in their July 13 Rebuttal, in order to create a complete and accurate record for the Board to consider approval of the Transaction.

Respectfully submitted,



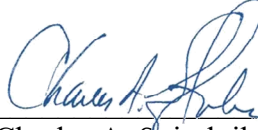
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Dated: August 1, 2022

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 REPLY, upon all parties of record in this proceeding.



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ATTACHMENT A

Verified Statement of Steve M. Cork

PUBLIC VERSION

**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 – KANSASCITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

SUPPLEMENTAL VERIFIED STATEMENT OF STEVE M. CORK

1. I am Steve M. Cork. I am Acting Sr. Director Interline Operations for Metra. I have been employed at Metra since 2016. Before that, I was employed at the Canadian Pacific for 23 years, serving in several different roles and capacities of increased responsibility.
2. I have reviewed the Rebuttal filed by Applicants in these proceedings on July 12, 2022 (CP-53/KCS-39) as well as the relevant associated exhibits. I am submitting this Verified Statement in order to correct certain statements made in that filing as well as in the verified statements of Mr. Raymond A. Elphick and Mr. Adolph Gameiro.
3. Applicants state, supported by the verified statement of Mr. Elphick, that:

In fact, the Transaction will add *zero* trains per day east of Bensenville, including the portion of this segment between the east end of the yard and Tower B12. *See* Elphick R.V.S. at ¶ 7. All other CPKC traffic east of Bensenville to or from other railroads in Chicago, or traffic to or from east of Chicago (for example, Detroit or Eastern Canada), will be handled in existing trains as Mr. Elphick explains. Elphick R.V.S. at ¶ 10.

CP-53/KCS-39, Volume I, at 172. *See also id.* at 175, 201, 204, 217.

4. My response: Traffic east of Bensenville toward to the Indiana Harbor Belt (“IHB”) and Belt Railway of Chicago (“BRC”) must also increase, as will most likely traffic to and from the north with potential new shippers in places like Racine and Milwaukee taking

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advantage of a direct route to KCS points and beyond. Metra has previously explained, in verified statements of Metra staff with extensive experience of current interference caused by CP's operations, and using outputs by Metra's modeling, how Applicants' assertions ignore the actual operating environment in which Metra trains run.

Notwithstanding, Applicants' semantics in using additional "new *trains*" is silent on other movements that are not technically train movements, such as interchange assignments, trains linked on existing schedules, transfers, and/or local assignments.

5. Mr. Elphick states in his verified statement:

In assessing whether a local train, foreign train, yard train or work train has an impact on capacity, CP anchors itself on methods and measures of capacity utilization. CP then builds on its understanding of local operations, yard and track maintenance activities, foreign train activities and how long it takes to traverse segments or diamonds. CP also enlists local experts to understand the nature and cause of operational interference as well as what can be done to remedy that interference. CP also calls upon its past experience on its own lines. Notably, in the case of the MD-W and MD-N Lines, CP considered the fact that these lines historically had heavier freight operations than there are currently.

CP-53/KCS-39, Volume II, V.S. Elphick ¶ 27.

6. My response: If CP "anchored itself" in sound methods, "enlist[ed] local experts", and "considered . . . historical[]" use, it would have presented its own RTC analysis from the beginning, consulted Metra early (or at all) in developing its Operating Plan, and would factor in the existing interference that it causes to Metra's service on these lines. Indeed, Metra has already had a taste of what to expect from the Transaction with the new "interline" intermodal train operated between KCS and CP.

7. Mr. Gameiro states in his verified statement that:

Second, Metra seeks a condition imposing a "standard and process for Metra schedule changes and new trains" based on the claim that Metra has a "right to use capacity on MD-W and MD-N, which it owns." METR-7 at 74. With respect, although Metra does own the track assets associated with the MD-W and MD-N lines, as I have explained the longstanding agreements between CP and Metra do not give Metra "ownership of the operational capacity" on these lines any more than they give such ownership to CP. Rather, they provide for a set of capacity-allocation rules that vary between (a) Metra's peak periods,

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during which CP may not interfere with Metra and Metra is free to add trains without limitation beyond the physical capabilities of the infrastructure, and (b) all other times of the day and night, when the agreements provide for an agreed number of Metra trains and a set schedule for those trains, devoting all remaining capacity to CP's freight operations (so long as those trains do not unreasonably disrupt or delay Metra trains) and requiring CP consent (not to be unreasonably withheld) for changes to Metra's schedules or the addition of new Metra trains.

CP-53/KCS-39, Volume II, V.S. Gameiro ¶ 21.

8. My response: Any standard agreement in North America distinguishes host, and tenant railroad. In this case, Metra is the host and CP (dba Soo Line/DM&E) are the tenant. The operational authority is not perceived as Mr. Gameiro has suggested, but clearly defined as Metra's, which includes the operational capacity.

9. Mr. Gameiro states in his verified statement that:

In discussions with CP, BNSF has long sought trackage rights allowing it to reach Clinton (and points south) via a connection with CP at Savanna rather than Davenport. I personally met with BNSF in Calgary to discuss this BNSF request in 2011.

CP has not been willing to grant such rights. Among other things, there is no connection between CP and BNSF at Savanna that would allow "straight ahead" operation of BNSF trains. The only connection is in the northeast quadrant of the at-grade crossing at Savanna, meaning that BNSF trains would have to perform a backing move on CP mainline trackage there, which would disrupt mainline operations. In addition, were BNSF to access its Clinton-Davenport rights via Savanna, BNSF trains would operate over an additional 19.6 miles of CP mainline trackage, introducing additional operational complexity there and fundamentally altering the reciprocal nature of the rights exchanged in 1995.

CP-53/KCS-39, Volume II, V.S. Gameiro ¶¶ 29-30.

10. My response: Ironically, the rationale CP uses for not allowing the BNSF trackage rights between Savanna and Clinton (citing mainline disruption) is exactly what they do on a regular basis to Metra at Schiller Park. This is a daily move that has disrupted Metra trains. It is part of their advertised operating plan for train operations to/from Schiller Park.

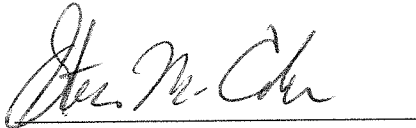
[SIGNATURE ON FOLLOWING PAGE]

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I, Steven Cork, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on August 1, 2022.


Steve M. Cork

PUBLIC VERSION

ATTACHMENT B

Supplemental Reply Verified Statement of Richard Oppenheim

PUBLIC VERSION

**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 – KANSASCITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

SUPPLEMENTAL VERIFIED STATEMENT OF RICHARD P. OPPENHEIM

1. I am Richard P. Oppenheim. I am Director of Operations, Metra Chicago Union Station (“CUS”) District. I have been employed at Metra since June 1997.
2. I previously submitted a Verified Statement in support of Metra’s comments in these proceedings submitted March 15, 2022 (METR-7). This Supplemental Verified Statement incorporates my original Verified Statement.
3. I have reviewed the Rebuttal filed by Applicants in these proceedings on July 12, 2022 (CP-53/KCS-39) as well as the relevant associated exhibits. I am submitting this Supplemental Verified Statement in order to correct certain statements made in that filing as well as in the verified statements of Mr. Raymond A. Elphick and Mr. Nick Walker.

4. Applicants state that:

CP is embarking on a major reconfiguration of Bensenville Yard that will dramatically improve the ability of this facility to receive and depart trains efficiently. See Reply Verified Statement of Nick Walker (“Walker R.V.S.”) at ¶¶ 54-58; see also Elphick R.V.S. at ¶¶ 29-38. The major reconfiguration of Bensenville Yard will eliminate or reduce the problem of trains doubling or tripling out of yard, which accounts for many of Metra’s “complaints” and will improve the handling of intermodal (and automotive) traffic, allowing trains to move directly into the yard and eliminating moves to or from Schiller Park. See Elphick R.V.S. at ¶¶ 33-34. As such, CP expects the reconfiguration will greatly improve the performance of Metra’s trains on MD-W. See Walker R.V.S. at ¶ [58].

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CP-53/KCS-39, Vol. I, at 183. *See also id.* at 172.

5. My response: Delays at Bensenville are responsible for a large number of Metra delays and passenger inconvenience, but those are certainly not the only ones. Moreover, the proposed Bensenville Yard improvements essentially involve longer receiving tracks. These will slightly improve the performance of traffic entering the yard, but they will not in any way alleviate the problem if trains are not dispatched properly, which Metra's evidence amply shows is the root cause of interference with Metra's service. The yard improvements will not materially change the performance of freight trains departing from the yard and will speed up inbound traffic only minimally. CP has the ability to manage its traffic flows and train lengths to fit current yard configuration, but it simply chooses to exercise self-fulfilling efficiencies over minimizing impact to Metra, the owner of this line.

6. Applicants state:

According to Metra's own data, CP dispatching and freight operations are almost always successful in avoiding any delay to Metra trains. Walker R.V.S., at ¶¶ 32-35. Metra's allegations that CP is responsible for "continual" and "routine" delays to Metra trains on the MD-W Line, and that CP's dispatching leads to "regular – weekly, and in some cases daily – interference with Metra's peak and non-peak train service," are simply not supported by Metra's own data.

CP-53/KCS-39, Vol. I, at 184.

7. My response: In arriving at these conclusions concerning delays to Metra trains, CP is looking exclusively at Metra OTP statistics, which determine whether a train has operated on time or not by looking at the arrival time at the final station plus an additional tolerance of 5 minutes or 15 minutes when Construction Schedules in effect (Approximately April-October most years). Most schedules also include additional time at the end of the run so that passengers who detrain at intermediate stations – the overwhelming majority of Metra's riders – can experience significant delays due to

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freight train interference with the train they were riding still being considered “on time” statistically. OTP statistics do not measure intermediary delays, blocking of passenger and vehicular crossings, or dispatching decisions that require Metra passengers to unnecessarily cross tracks and dodge or climb under freight trains. The reality is that Metra’s customers do not care that the statistics show trains on time if the train they were riding got them to their destination late. With CP’s predilection for pushing freight traffic ahead of scheduled Metra trains, this scenario appears far too often, with the train involved still showing on time statistically. Metra has already explained in detail why on-time performance, while performing an important function, is insufficient at assessing the full impact of CP’s dispatching on Metra’s service.

8. Applicants state:

CP dispatchers, who are trained and experienced to operate around the clock and are familiar with the complexities associated with dispatching freight trains alongside passenger trains, by placing them with Metra dispatchers, who are primarily focused on the operation of passenger trains between the early morning hours and late evening hours, would create a host of potential issues.

CP-53/KCS-39, Vol. I, at 213.

9. Similarly, Applicants state:

Walker’s Figure 13 illustrates how the different perspectives of CP and Metra’s dispatchers would handicap efficient operation of the MD-W and MD-N lines. Metra’s perspective would be focused on Metra’s own lines and operations, and thereby sub-optimize the movement of all trains across the network. This would yield a greater potential to disruption to freight and passenger operations in the Chicago terminal, and beyond.

CP-53/KCS-39, Vol. I, at 215.

10. My response: Putting aside the fact that CP likewise does not have the same perspective as Metra regarding Metra’s service, Applicants apparently do not realize that more focus on this critical area is a good thing, and that Metra’s more attentive focus on this area would benefit Applicants and the system more generally. CP’s Elgin Dispatcher not only dispatches Metra’s Elgin Subdivision during overnight hours, but also handles the D&H

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territory as well as several lines up toward the Canadian border. CP's C&M Dispatcher picks up the territory from Milwaukee to Portage during overnights as well as on weekends. Metra Dispatchers could concentrate on the Metra owned and maintained lines during this time period and ensure that everything was ready for Metra service to resume in the morning. CP freight traffic in the Chicago Terminal would receive *more* attention with Metra dispatching then they do with CP Dispatching.

11. Mr. Walker states in his verified statement:

Metra's April 2019 proposal to add six weekend trains to the MD-N line on a "trial basis" got caught up in the same discussion with Metra about accommodating the needs of CP, Amtrak, and Metra on this line. Freight operations had changed since Metra had removed those trains from its schedule in early 2018, and as noted the potential need to accommodate increased Amtrak trains also needed to be considered. CP was not intending to tell Metra that it could never add additional off-peak trains to the lines CP shares with Metra. At the time, the weekend trains Metra was already operating on the line were not running at or even near capacity. In requesting to add additional Metra trains, Metra was unable to provide any reason to think there was demand for these additional trains; rather Metra just wanted to experiment. CP was not telling Metra that it could never add additional off-peak trains to the lines CP shares with Metra, but CP felt it could not agree to add these trains without a more involved assessment of their impacts on CP's future operation flexibility and a further consideration of available alternatives.

CP-53/KCS-39, Vol. I, Walker V.S. ¶ 90.

12. My response: I can attest that Metra's desire to add these trains had absolutely nothing to do with seating capacity or how full the other trains were. The trains that Metra wished to reinstate were highly in demand by Metra customers who appreciated the convenience of having return options on weekends – many clearly stated that being faced with a two hour wait to return home in the afternoon was enough to make them drive into the city, whereas a one hour wait made the service attractive enough to where they would leave their cars at home. Metra needs to be able to tailor its service to the needs and demands of its customers. Similarly, the reverse commute trains during the week were specifically requested by a large group of businesses in Lake County that vowed to use the service if

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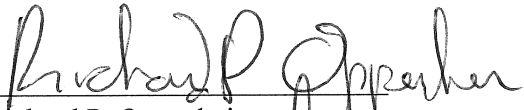
those trains were established. A large and identified group of potential new riders had to be turned away due to CP's unreasonable refusal to allow these trains to operate. Being told that Metra could not operate these trains on their own railroad so that future needs of CP and Amtrak on Metra's railroad *might* be a problem (it would not be), just added insult to injury.

[SIGNATURE ON FOLLOWING PAGE]

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I, Richard P. Oppenheim, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Supplemental Verified Statement.

Executed on August 1, 2022.


Richard P. Oppenheim


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ATTACHMENT C

Excerpts of Deposition of Richard Oppenheim – June 7, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

CANADIAN PACIFIC RAILWAY LIMITED, et al.
- CONTROL -
KANSAS CITY SOUTHERN, et al.

VIDEOTAPED DEPOSITION OF
RICHARD OPPENHEIM

DATE: June 7, 2022
TIME: 10:03 a.m. (Central)
PLACE: Embassy Suites, Columbus Drive,
Chicago

JOB NO: June 7, 2022
PAGES: 1 to 307
REPORTED BY: Cynthia J. Conforti, CSR, CRR

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(Washington, DC office)

ALSO PRESENT:

Jeremy Mangan, Videographer

Sue-Ann Rosen, Esq., Metra

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Further Examination by Mr. Spitulnik:	307

OPPENHEIM DEPOSITION EXHIBITS

NUMBER	DESCRIPTION	PAGE
Exhibit 1	Metra Fact Book 2019 No Bates numbers - 20 pgs	34
Exhibit 2	Metra Milwaukee District West Line Schedule - Effective 7/12/2021	48
Exhibit 3	March 2022 Metra document On-Time Performance	100
Exhibit 4	Summary of CP Delay Events 2016 - 2021 METR_FD36500_001156.01 - METR_FD36500_001156.22	154

1 A I would say the -- in addition to the five
2 and the seven I mentioned, there might be maybe
3 two more, two or three more, possibly.

4 Q And would that be loaded trains, destined
5 to market?

6 A Usually in one direction they would be
7 loaded, in the other direction they would be
8 empty.

9 Q But there's a two or three -- what I'm
10 asking is does the two or three include both
11 empties and loads, or is it two or three loads?

12 A I would say both, yeah, two to
13 three -- make it two to four.

14 Q Okay. And when you were
15 dispatching -- well, let me maybe establish some
16 foundation.

17 When you were in the Chicago dispatching
18 office that had responsibility in this time period
19 for dispatching the MD West line, how did -- how
20 did you dispatch those freight trains in
21 connection with the passenger operations that were
22 on the same line?

23 A Well, the good news was for the larger
24 part of that period, the five westbound Kansas
25 City trains operated late at night. The first

1 couple might -- may have come out when there were
2 one or two Metra trains left out there running,
3 but for the most part they were finished. There
4 was one -- one freight train that did operate
5 during the day every day around noon, and
6 basically we would look for the Metra trains --
7 midday ran hourly, it ran hourly service, and we'd
8 typically look for a window after a Metra train
9 had passed and then have the freight train come
10 out behind them.

11 Q And so let me see if I understand what you
12 just said.

13 You're talking about a westbound train?

14 A Yes.

15 Q Departing Bensenville; is that correct?

16 A Um-hmm, um-hmm. Yes.

17 Q And so you would -- well, was the -- was
18 the MD West line double track in that era?

19 A Except for about a mile crossing the Fox
20 River, outside of Elgin. It narrowed to a single
21 track across the Fox River, Tower B-35, and
22 otherwise there were -- there were two tracks. We
23 called it two main track centralized traffic
24 control.

25 And then beyond Elgin, it was double track

1 So now, and again, we are going to talk
2 about --

3 MR. SPITULNIK: Could you let him finish
4 his answer.

5 MR. MEYER: It was a yes-no answer; yes-no
6 question. You can follow-up on redirect if you
7 want.

8 BY MR. MEYER:

9 Q The -- in situations where a train is
10 going to come on the track, that as you've
11 described it, wouldn't be typical, so if the
12 eastbound in the morning to Chicago is going to
13 come on track 1 instead of track 2, Metra would
14 notify those passengers via a loudspeaker system
15 at the station; isn't that right?

16 A We would attempt to notify them.

17 Q Well, there is a loudspeaker system at
18 every station, isn't there?

19 A Right, but believe it or not, our
20 passengers don't all get there ahead of time and
21 paying attention. A lot of them sit in their cars
22 until the very last minute and they wouldn't hear
23 the announcements. We have some
24 English-as-a-second-language folks that
25 are -- don't understand the announcements.

1 Yes, we do make announcements, but it's
2 not -- it's not a foolproof system.

3 Q Fair enough. If I'm -- strike that.

4 Would you say it's typical that there's
5 only one person getting on a Metra train at a
6 given station?

7 A It's not typical, no.

8 Q And so if -- if one person understands the
9 loudspeaker and heads over to the proper platform,
10 that's a pretty good indication that
11 other -- other passengers will get the idea that
12 the train's coming on a different platform from
13 what they might have thought at first?

14 A You would think that would be true.
15 However, I live in Deerfield, and for a lot of
16 years rode the first train in in the morning. And
17 periodically my train would be on the opposite
18 track, and there would be an announcement, and
19 three-quarters of the people would go over to the
20 proper side where the train was coming, and at
21 least a quarter of them would stand there holding
22 their newspapers as if nothing had happened,
23 waiting for their train to come in. And on
24 occasions I had to go over and actually tap people
25 on the shoulder and say, "go to the other side."

1 Q Okay. So if I wanted to go look more
2 systematically at the circumstances surrounding
3 these alt track situations, as you've described
4 them, I would go through your index here, your
5 Exhibit B--3, identify the alt track situations.
6 And then if I wished to have more detail, I could
7 go look at the e-mails in question that provided
8 more context, right?

9 A True, yes.

10 MR. MEYER: I'm going to ask the court
11 reporter to mark as Oppenheim exhibit -- where are
12 we, 5, 4?

13 THE REPORTER: 4.

14 (Oppenheim Exhibit 4 is introduced for the
15 record.)

16 MR. MEYER: 4. A document that was
17 produced to us in discovery, came from Metra,
18 which appears to be another version of this
19 spreadsheet that's Exhibit B--3, that has just
20 slightly more information on it.

21 BY MR. MEYER:

22 Q Have you seen this before?

23 A Yes.

24 Q Okay. Did you prepare it?

25 A No.

1 on keeping the passenger operation pure and in the
2 best interest of Metra's customers.

3 Q What does the word "pure" mean in that
4 sentence?

5 A I think it would be -- it would reflect on
6 a commitment to keeping Metra's schedules -- I
7 thought "pure" was a good word, I don't know,
8 keeping Metra's schedules what they are on paper,
9 keeping the trains operating what the paper says
10 so that when people look at their website or look
11 at their timetable and go to the depot, they can
12 expect their train to be pulling in when it says.

13 Q So I may have heard a meaning that you did
14 not intend, but "pure" sounded to me like the word
15 "perfect" which you objected to earlier today.

16 A Nothing's ever going to be perfect in
17 railroading, I know that, but we're going to
18 try -- I would like to see it get as close as it
19 possibly can be.

20 Q For Metra's schedules?

21 A Everybody's schedules.

22 Q CP's dispatchers in Milwaukee, when
23 they're dispatching the Metra MD West and MD North
24 lines or dispatching trains on those lines, what
25 visibility do they have to what else is going on

1 on the CP network, if you know.

2 A I should know. I've got one in my office.
3 CP -- C&M dispatcher has got -- has got the
4 territory between Rondout and Milwaukee, and I
5 know they have a few screens for the rest of the
6 territory.

7 Q When you say "the rest of the territory,"
8 you mean --

9 A Rest of -- anywhere there's CTC they have
10 got --

11 Q Beyond Milwaukee on the -- in the River
12 Wisconsin?

13 A Yes.

14 Q All the way ought to La Crosse, right?

15 A Yes.

16 Q And what about on the -- what you refer to
17 as the Elgin Sub, the MD West line?

18 A I learned recently, and when I say
19 "recently," I think it was last week, and I was
20 not aware of this, apparently there is some sort
21 of a makeshift overview that picks up the Chicago
22 sub, which does not have CTC, and I'm not entirely
23 sure what it is or how they get it or what you
24 actually see on it. I didn't know that it
25 existed. But apparently that does exist, and,

1 hour, do they?

2 A Yeah, they do. The way they do it at
3 Bensenville they do, because -- and we have had
4 this discussion too. I said, you know, crew
5 changes are fine. If the crew was out there when
6 the train pulls up, the crew is out there, they
7 get on, they go, that's great, that's wonderful.
8 There's lots of ways to schedule that. Never
9 happens. Never.

10 I've never seen -- when I say "never," I
11 have honestly not seen a get-off-and-go crew
12 change in at least maybe eight or nine months.
13 They're always -- they're always looking at their
14 paperwork or waiting for a ride or they're blocked
15 by this move in the yard, and the relief crew is
16 not out there waiting when the train pulls up. If
17 it were, they might be a different story, but it's
18 not.

19 Q I think I do understand the issue you're
20 talking about.

21 You don't know, on any given case, when a
22 crew change does occur on one of these tracks,
23 whether there is available trackage to handle that
24 crew change somewhere else, or do you?

25 A Usually there is a track available between

1 B-17 and Bryn Mawr, assuming the train fits, which
2 bulk trains always do, or Galewood. But doing a
3 crew change there involves somebody at Bensenville
4 providing transportation for the crew to go down
5 there and make the crew change, and they don't
6 want to do that.

7 Q That may also result in more time being
8 spent to change the crews, isn't that possible?

9 A They certainly have the capabilities of
10 driving a crew down to Galewood before the train
11 pulls up there. I mean, it takes 20 minutes.

12 Q Galewood is past the connection to the
13 IHB, isn't it?

14 A It's past IHB, yeah.

15 Q So if a train's coming --

16 A You're right.

17 Q -- on and off the IHB, that's not an
18 option?

19 A No, they could change crews at NorPaul
20 Yard on the IHB, which is basically looking at
21 Bensenville, or they could change between B-17 and
22 Bryn Mawr.

23 Q Category 4: Poor operational dispatching
24 control of freight train entering and exiting
25 Bensenville that result in use or following of

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ATTACHMENT D

Supplemental Reply Verified Statement of Gregory Godfrey

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**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 – KANSASCITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

SUPPLEMENTAL VERIFIED STATEMENT OF GREG J.M. GODFREY

1. I am Greg J.M. Godfrey. I am the Director of the Consolidated Control Center (train dispatching office) with two years with Metra and nineteen years railroad experience.
2. I previously submitted a Verified Statement in support of Metra's comments in these proceedings submitted March 15, 2022 (METR-7). This Supplemental Verified Statement incorporates my original Verified Statement.
3. I have reviewed the Rebuttal filed by Applicants in these proceedings on July 12, 2022 (CP-53/KCS-39) as well as the relevant associated exhibits. I am submitting this Supplemental Verified Statement in order to correct certain statements made in that filing as well as in the verified statements of Mr. Raymond A. Elphick and Mr. Nick Walker.

4. Applicants state:

Metra complains that a 'typical example of CP-caused delays' occurs when CP makes a crew change on mainline tracks outside of Bensenville Yard. As explained by Mr. Elphick, to the extent this occurs, it is usually for trains coming from Milwaukee on the MD-N Line seeking to enter Bensenville Yard at Tower B17, which cannot enter yard tracks in a fluid manner from that direction. Elphick R.V.S. at ¶ 44. None of the new CPKC trains fall into this category, and in any event CP is working to eliminate the need to make crew changes on mainline tracks for its existing trains as well.

CP-53/KCS-39, Vol. I, at 201-202.

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5. Applicants' supporting testimony also suggests that Metra is "confused" about the impact of CP's operations in and out of Bensenville:

Metra's confusion may stem from the fact that Applicants' Operating Plan showed train count increases between Tower B17 and Tower B12. However, this was simply because trains were assigned to that segment if they were entering or departing Bensenville Yard to or from the west. Because Bensenville Yard is geographically situated between Tower B17 and Tower B12, trains moving within Bensenville Yard itself show up as moving between those towers, even though they are not actually operating on the mainline tracks of the MD-W Line east of Tower B17. To be abundantly clear, Applicants do not project any additional daily freight trains to travel on the mainline tracks of the MD-W Line east of Bensenville Yard.

CP-53/KCS-39, Vol. II, Elphick V.S. ¶ 8.

6. My response: Metra has plenty of experience with CP's difficulties in entering and exiting Bensenville Yard and occupying Metra's mainline to conduct yard activities such as crew changes, and has a similarly clear view of how the Transaction will exacerbate these issues. CP currently uses this entire location as a mainline yard to stage trains to Bensenville Yard. Further, even though Franklin Park - in this location - was a significant investment by the CREATE program¹ that Metra supported, Metra has not seen any improvement in service or nor have we seen a reduction in delays. Current data does not show a substantial benefit to Metra because of the way in which freight trains use the mains as a yard instead of the yard as a yard at Franklin Park. This was inconsistent with the planned operation and assumptions of benefit to the Chicagoland Network at Franklin Park. If Metra were dispatching the line, the project would have shown improvements in the area consistent with best practice train movement and in alignment with the Chicago Protocols.

7. In his verified statement, Mr. Walker states:

Finally, there is good reason to be concerned that Metra does not appreciate the greater complexity associated with dispatching freight operations relative to

¹ See CREATE, "Completion of Franklin Park CREATE B1 Project Will Reduce Delays to Metra and Freight Trains", <https://www.createprogram.org/completion-of-franklin-park-create-b1-project-will-reduce-delays-to-metra-and-freight-trains/> [Accessed July 31, 2022].

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scheduled commuter trains. . . . Moreover, in contrast to scheduled commuter trains, freight trains do not adhere to schedules as precisely, must be received by yard tracks that are available to handle them, must meet one another at sidings that are the proper length to handle them, operate at more varied speeds, and encounter a far more diverse array of potential conditions (broken knuckles, overheated bearings, etc.) that disrupt operations on lines of road. Metra's dispatchers would need to develop the experience and expertise to handle all of these conditions, but would start out far behind CP's dispatchers on the learning curve.

CP-53/KCS-39, Vol. II, Walker V.S. ¶ 67.

8. My response: Metra trains and has the same General Code of Operating Rules ("GCOR") rule book and deals with all of these protocols, procedures, and concepts in its training, day to day operations, and rule books. Metra train movement staff is equally competent and equally experienced under train movement protocols.

9. In his verified statement, Mr. Walker states:

While Metra dispatchers have some experience dispatching a handful of freight trains on other lines in the Chicago area, they lack the experience of CP's dispatchers. . . . This inexperience would inevitably jeopardize efficient rail operations on the lines CP and Metra share, as well as disrupting CP's freight operation far beyond the boundaries of those lines.

CP-53/KCS-39, Vol. II, V.S. Walker ¶ 68.

10. My response: This characterization of Metra's dispatchers is inaccurate. Many of the current CP Dispatchers entrust the Metra A5 and B12 Dispatchers with handling and making the train movement decisions, particularly when they are tied up or distracted by activities on non-Metra lines.

11. Applicants state:

Mr. Godfrey admits Metra's dispatchers lack the experience looking at the broader CP network on a day-to-day basis that is necessary to make appropriate dispatching decisions.

CP-53/KCS-39, Vol. I, at 214 (citing Godfrey Dep. Tr. at 83:25-84:21; 122:2-23.).

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12. My response: Nowhere do I make any such statement. In fact, as indicated in my testimony, my point was that CP's failure to communicate with Metra and to allow Metra insight into what is occurring on its network, which is entirely different than the experience Metra has with the other freight railroads with which it successfully coordinates on a regular basis, is a huge obstacle to the kind of successful operating partnership that Metra enjoys on other lines in its system. CP's only experience dispatching passenger service is on Metra's lines, and Metra is completely dissatisfied with CP's dispatching. On the other hand, Metra is well-versed in dispatching both passenger and freight traffic in the Chicago area. Not only are Metra dispatchers already familiar with and conversant with CP operations beyond the Metra boundaries, they would have access to overview capabilities for these territories. Metra dispatchers and chief dispatchers would brief with their CP counterparts to ensure that no misunderstandings took place regarding the handling of CP traffic on Metra tracks. It must be remembered that Metra has its own representation in the Chicago Integrated Rail Operations Center ("CIROC"), whose members obtains condition reports on all of the railroads several times each day. The CIROC office that deals directly with coordinating freight movements with all of the freight carriers in the Chicago Terminal is located in the same building and across the hall from the Metra's Dispatching office. Frequent interaction between Metra Dispatching staff and CIROC staff takes place 24/7. The Metra Dispatching office is already closely attuned with all freight Operations in the Chicago Terminal that affects it. This includes UP, BRC, CSX, NS, IHB and others. Accordingly, Metra is in a far better position to facilitate these operations than CP. Ironically, CP is the only major freight carrier in the Chicago Terminal with a consistent long-term lack of representation and participation in CIROC.

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13. Applicants state:

With Metra dispatchers responsible east of Randall Road (on the MD-W line) and south of Rondout (on the MD-N line), coordination between CP and Metra would be inherently less efficient and more difficult than coordination between different sets of CP dispatchers who bring a broader network perspective to their decision-making. See, e.g., Walker R.V.S., at ¶ 76 (illustrating how dividing dispatching between Metra and CP would curtail efficiency). Efficiently dispatching these lines requires awareness in real time of conditions on other part of the network well beyond Metra's operational boundaries including not only CPs own lines as far away as Kansas City and St. Paul, MN, and the inner workings of CP's important Bensenville Yard, but also lines controlled by UP, IHB, BRC and others. See Walker R.V.S., at ¶ 72. CP dispatchers have the experience, knowledge, and situational-awareness necessary to coordinate with the rest of the CP network and to juggle these moving pieces. Metra dispatchers almost certainly would not. Walker R.V.S., at ¶¶ 73-82.

CP-53/KCS-39, Vol. I, at 214-215. See also *id.* at 216.

14. My response: Applicants ignore Metra's team's ample experience working cooperatively

with Class I railroads throughout its network. Metra and other railroads operating in the Chicago area commonly share information in order to move traffic between lines dispatched by different entities. For example, Metra already has visibility of the UP lines in the Chicago terminal area (and CIROC is still across the hall). Visibility of territory beyond Rondout is also readily available via Overview. Applicants also neglect to note that Metra dispatchers actually dispatch the Milwaukee District lines under the oversight of CP dispatchers, and therefore have just as much experience. Metra Dispatchers are every bit as capable of coordinating these moves with the CP counterpart who handles West of Randall Road. This is no different than the current arrangement where the CP Elgin dispatcher's territory ends at the end of the Metra territory, and a CP Iowa Movement Director handles the Chicago Subdivision on the other side of Randall Road from Metra's MD-W. The dispatchers handling the Elgin Subdivision and Chicago Subdivision communicate with each other to facilitate these movements. The Metra dispatcher would be able to communicate in exactly the same way.

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15. Mr. Walker states in his verified statement:

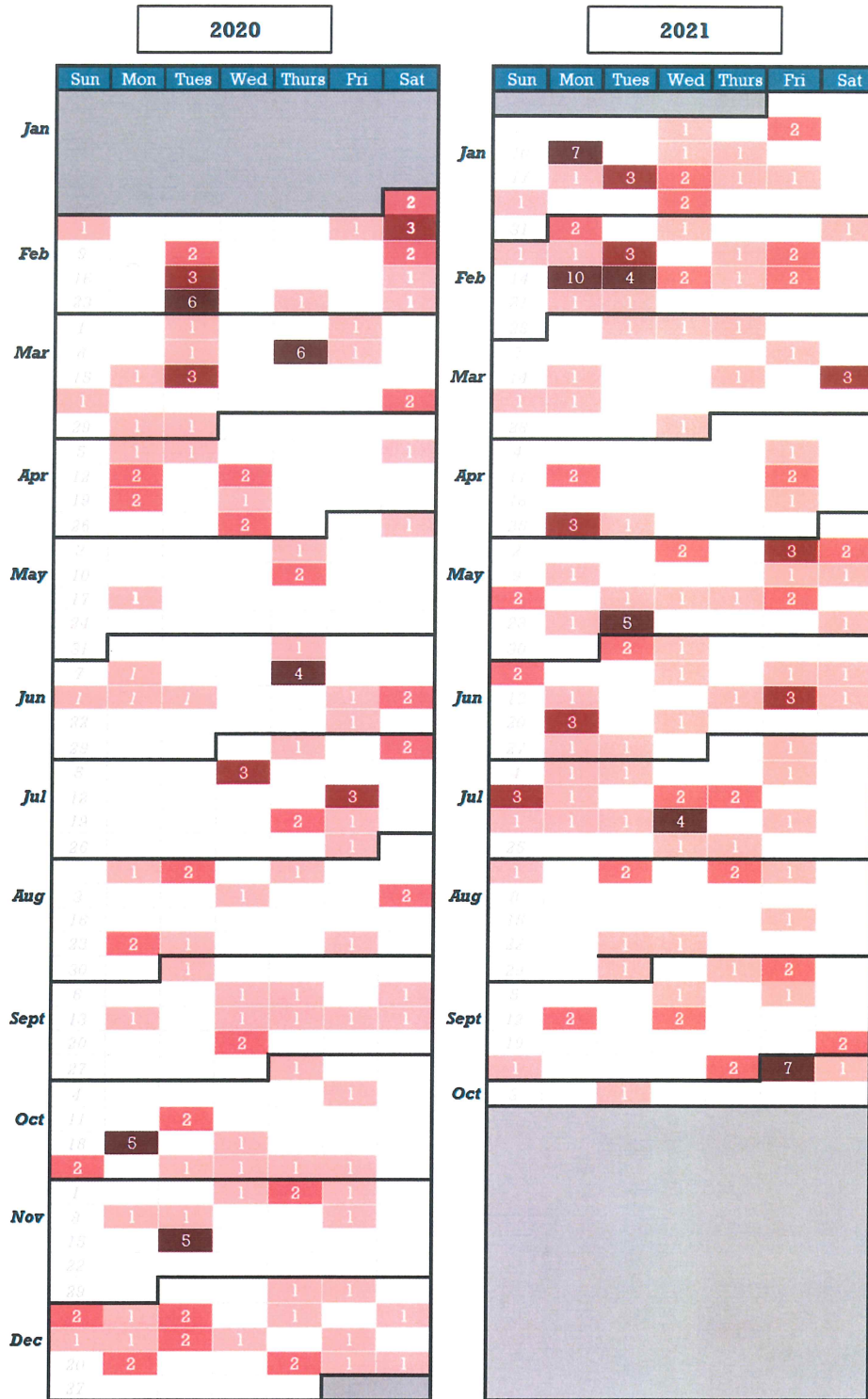
The disruption would be exacerbated by Metra's peak windows during which Metra dispatchers would refuse access to the MD-W line regardless of whether there was room to move an arriving freight.

CP-53/KCS-39, Vol. II, Walker V.S. ¶ 76.

16. My response: In reality, Metra Dispatchers would make educated decisions based on an up to the minute assessment of conditions on the Metra territory, taking into consideration such factors as the length of the freight train, the available windows between scheduled Metra trains, the amount of power on the freight train, etc. Metra Dispatchers would not categorically refuse to move a freight train during Peak Period, but would be much more careful than CP currently is in allowing freight traffic on to the territory when the potential for delay and interference are too great.

17. Metra has prepared a graphical representation of data collected by Metra between 2020 and 2021 regarding CP-caused delays on Metra's MD-W and MD-N (including Metra NCS service operating on the MD-W line). The underlying data for this representation, shown on the following page, was provided in METR-7, Ex. D-1. I have reviewed this representation and can attest to its accuracy. The representation depicts a calendar for 2020-2021. Each "cell" represents a day of the year. Each "column" of cells represents a day of the week, as labeled. Each month is also labelled. On days in which the data in the dataset in Exhibit D-1 indicated a CP-caused delay to a Metra train, the "cell" is highlighted with a shade of red. The darker the red, the more times CP caused a delay to a Metra train according to the underlying data. On days registering delays, the number of trains delayed is also represented. White cells represent days within the dataset in which no delays were recorded. This reflects that, contrary to Applicants' assertions, Metra really does deal with CP dispatching and operational delays on a weekly or even daily basis.

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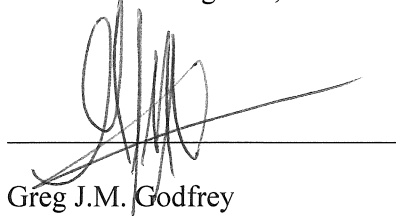


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I, Greg J.M. Godfrey, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Supplemental Verified Statement.

Executed on August 1, 2022.

A handwritten signature in black ink, appearing to read 'JMG', is written over a horizontal line. The signature is stylized and extends to the right of the line.

Greg J.M. Godfrey

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ATTACHMENT E

Sur-Reply Verified Statement of Crowley and Mulholland

PUBLIC VERSION

The entire text of this Exhibit E is CONFIDENTIAL.

**A copy of the CONFIDENTIAL VERSION is made available to the
persons who have signed the undertaking.**

PUBLIC VERSION

ATTACHMENT F

Excerpts of Deposition of Gregory Godfrey – June 9, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

CANADIAN PACIFIC RAILWAY LIMITED, et al.
- CONTROL -
KANSAS CITY SOUTHERN, et al.

VIDEOTAPED DEPOSITION OF
GREG GODFREY

DATE: June 9, 2022
TIME: 7:08 a.m. (Central)
PLACE: Embassy Suites, Columbus Drive,
Chicago

JOB NO: June 9, 2022
PAGES: 1 to 148
REPORTED BY: Cynthia J. Conforti, CSR, CRR

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ALSO PRESENT:

Sonia Gupta, Sullivan & Cromwell

Jeremy Mangan, Videographer

Sue-Ann Rosen, Esq., Metra

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Exhibit 2	GC_CP_Analysis_Final_3_15_22 MODDATA	52
Exhibit 3	GC_CP_Analysis_Final_3_15_22 MODDATA	78
Exhibit 4	Podcast document "Commuter Rail Coalition , Metra Executive Leadership: Rail Group On Air Podcast"	105
Rodriguez Exhibit 1	Previously marked Verified Statement of GREG GODFREY	49

1 movements on a particular line, were they?

2 A I calculated counts of trains in my graph.
3 They weren't percentages. So these are counts of
4 delays. So you're -- yes, yes, yeah.

5 Q So when you referred to -- I think you
6 referred earlier today to having come up with a
7 percentage of -- or a ratio. That wasn't a ratio
8 that involved going to look at how many trains
9 Metra operated?

10 A Correct.

11 Q You were only looking at delays.

12 A Correct.

13 Q And so I think this is fairly clear, but
14 when you went to the TOPS database for purposes of
15 building Figure 1, you only went to that database
16 to get data on delays?

17 A Correct.

18 Q And what specific delays did you pull from
19 the TOPS database?

20 A What we call D delays and D-1 delays.

21 D delays are freight priority delays. D-1
22 delays are cascading delays that resulted from
23 those freight delays.

24 Q And by "cascading," and I think this is
25 fairly clear in your testimony, well, I got -- so

1 a D-1 delay is a delay that someone at Metra has
2 assign the D-1 code to?

3 A Correct.

4 Q You don't do the assignment of delay
5 codes, do you?

6 A I have input on them, not final decision.

7 Q And so a D-1 is referring to a situation
8 where that -- the train was delayed because of
9 something that happened previously to another
10 train?

11 A Correct.

12 Q So if what you were looking for was the
13 number of times a bad dispatching decision
14 delayed -- a bad dispatching decision was made,
15 you wouldn't look at the D-1 delays to ask -- to
16 answer that question, would you?

17 A Which is exactly why I separated out D-1
18 and D so we can get an accurate picture of the
19 core versus the echo.

20 Q So the word "echo" that you just used was
21 referring to the D-1 category?

22 A Yes. Cascading.

23 Q Thank you.

24 When you did this analysis reflected in
25 your verified statement of the TOPS data, did you

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ATTACHMENT G

Excerpts of Deposition of David Rodriguez – June 8, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

CANADIAN PACIFIC RAILWAY LIMITED, et al.
- CONTROL -
KANSAS CITY SOUTHERN, et al.

VIDEOTAPED DEPOSITION OF
DAVID RODRIGUEZ

DATE: June 8, 2022
TIME: 9:32 a.m. (Central)
PLACE: Embassy Suites, Columbus Drive,
Chicago

JOB NO: June 8, 2022
PAGES: 1 to 120
REPORTED BY: Cynthia J. Conforti, CSR, CRR

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Sonia Gupta, Sullivan & Cromwell

Jeremy Mangan, Videographer

Sue-Ann Rosen, Esq., Metra

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RODRIGUEZ DEPOSITION EXHIBITS

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Exhibit 1	Metra Fact Book 2019 No Bates numbers - 20 pgs	7
Exhibit 2	Metra Milwaukee West Line Schedule - Effective 7/12/2021	50
Exhibit 3	(Oppenheim - previously marked) March 2022 Metra document On-Time Performance	23

1 BY MR. MEYER:

2 Q Mr. Rodriguez, I'm not -- I'm not asking
3 about the specific percentages.

4 A Uh-huh.

5 Q The relative size of the pie slices, I
6 think you said earlier that UP is the biggest
7 problem right now in Chicago?

8 A I did.

9 Q Does -- would that mean that their pie
10 slice on a pie chart like this would be the
11 largest?

12 A Yes.

13 Q Okay. And what would be the next largest?

14 A Are you asking me about total? Are you
15 asking me about any specific month? Because if
16 you're asking me for a total, the second highest
17 total would be CP.

18 Q Total -- "total" meaning?

19 A Last two years.

20 Q Last two years. Okay.

21 And -- and what data source would you have
22 that would allow me to -- or CP to validate that
23 statement?

24 A I have a table that I put together that I
25 keep every single day where I change the -- the

1 Q Is it possible that delays caused by
2 freight train interference that are coded D also
3 reflect situations where the dispatcher was not
4 intending to delay a Metra train?

5 A It's possible, but short of having that
6 information, we code those D.

7 Q Okay. So if I'm looking at the tables
8 here and the locations, is it possible for me to
9 assess where -- which of these delays related to
10 freight trains that were operating on the
11 Milwaukee District West line originating at
12 Bensenville and heading west or arriving and
13 terminating at Bensenville from the west?

14 A For you to be able to determine that from
15 this information?

16 Q Yeah.

17 A Only if we included it in the delay
18 information.

19 Q Well, there's -- some -- some of the
20 delays could be ruled out as involving those kinds
21 of trains, right?

22 So, for example, Milwaukee North delays
23 wouldn't have anything to do with a train between
24 Bensenville and the west or between the west and
25 Bensenville, would it?

1 A West of Bensenville?

2 Q Yeah.

3 A No.

4 Q And a North Central Service train wouldn't
5 be delayed by a freight train that was moving
6 between the west and Bensenville or between
7 Bensenville and the west, would it?

8 A No. Unless that train came east of
9 Bensenville, that would be the only way.

10 Q So a train would have to come east of
11 Bensenville --

12 A Correct.

13 Q -- to delay an NCS train?

14 A Correct.

15 Q And -- and if we were to go through the
16 locations here, we could identify locations that
17 were east of Bensenville that would not
18 be -- would not have involved a train that was
19 operating only between Bensenville and the west?

20 A Correct.

21 Q So if I look at February 2020, the
22 first -- the first line item in Milwaukee West is
23 Bensenville. We can come back and talk about that
24 later. There's B-17. That's west of Bensenville.

25 The next one's blank. Is that -- is there

1 a reason for there to be a blank location?

2 A It's -- it's blank because the location
3 was not entered in TOPS. So when I took the
4 information, I included it in the cause but didn't
5 assign it a location.

6 Q Based on this information, we just don't
7 know where that delay occurred. Well, actually,
8 maybe we do.

9 A You do -- you do in cause between B-12 and
10 B-17.

11 Q Okay. But just reading down -- further
12 down in the column, B-12, if we see B-12, we know
13 this was a delay that resulted from freight
14 interference east of Bensenville; is that right?

15 A Yes, yes.

16 Q Similarly, if we see Galewood, we know it
17 happened east of Bensenville?

18 A Correct.

19 Q A-5 is also east of Bensenville?

20 A Correct.

21 Q So if the question were how many of these
22 delays were related to freight trains that were
23 moving between Bensenville and the west, we could
24 at least eliminate the ones that are at locations
25 east of Bensenville from consideration.

1 A Correct.

2 Q Now, we wouldn't -- we wouldn't know
3 solely from that -- like, it will -- if there's a
4 location at Bensenville at B-17, we'd need more
5 information to determine whether the freight train
6 that caused the delay was operating between
7 Bensenville and the west or was operating past
8 Bensenville and heading north?

9 A Correct.

10 Q Or moving past Bensenville to the east and
11 perhaps making a crew change at Bensenville?

12 A Correct.

13 Q So the only place we could look for that
14 information is in the cause --

15 A Correct.

16 Q -- explanation?

17 So if we look at Bensenville -- the first
18 item, date, February 1st, Bensenville location,
19 there's a delay. It says:

20 Delayed for CP 286 yarding at Bensenville?

21 So we'd have to know whether CP 286 was a
22 train that operated between Bensenville and the
23 west or came from another location, the north,
24 into Bensenville?

25 A We know that it's yarding. It's going

1 into the yard, right.

2 Q And do you know where the CP 286 train
3 symbol operates?

4 A Not off the top of my head, no.

5 Q Okay. But if someone did know that --

6 A Yes.

7 Q -- they could assess whether it was a
8 train from the west or a train from the north?

9 A Yes.

10 Q Similarly, the next line is at B-17, so
11 that's, again, the control point west of
12 Bensenville, and then what we know from the cause,
13 single tracking around CP 681, an emergency, we'd
14 have to know whether that particular CP 681 was a
15 train that came from the west or was going to the
16 west or going to the north?

17 A Okay. So the delay is to the westbound
18 train. I could -- I could do this for you if you
19 want.

20 The train is a westbound train.

21 Q You mean the 2717 is a westbound train?

22 A Yes.

23 Q Is that what you mean?

24 A Yes. 2717 is a westbound train. So they
25 were delayed for CP 681, an emergency, 35 minutes.

1 So this train -- this train had to be sitting
2 between B -- sitting west of B-17.

3 Q Okay. So it appears that that 681 would
4 be an example of a train that was moving between
5 the west and Bensenville --

6 A Correct.

7 Q -- and caused a delay?

8 A Correct.

9 Q Okay. But if I were -- moving down the
10 list, just to use some other examples, and I
11 promise you I'm not planning to do every single
12 row on every single --

13 A I was going to ask for lunch if you were.

14 Q No, definitely not planning on that.

15 If you look at February 18th, got a couple
16 of B-12 examples. So the 2213, that's a westbound
17 Metra train, right?

18 A 2213 is a westbound Metra train.

19 Q Odd numbers are westbound?

20 A Yes.

21 Q Okay. And there the cause is a 13,000 CP
22 freight train stopped on the connector at Bryn
23 Mawr blocking traffic on the West line.

24 So Bryn Mawr is the location north of B-17
25 where there's a connection to the Union Pacific.

1 So this would be a train operating between the
2 north and Bensenville, freight train operating
3 between the north and Bensenville, right?

4 A Yes.

5 Q What's the West line?

6 A The Milwaukee West line, the Elgin Sub.

7 Q Oh, okay. So it's a -- so Indy West, the
8 Elgin Sub and West line are all synonyms?

9 A Yes.

10 Q Okay. Go -- go down to the 25th. 2208 is
11 delayed at B-12. Well, that B-12, that's
12 Bensenville, we've established that, so let's skip
13 that.

14 Go to the 27th. We have got 2251 at B-17,
15 and the cause is CP 470 extremely slow, yarding at
16 B-17. See that?

17 A Yes.

18 Q So we'd have to know whether CP 470 was
19 coming from the north or coming from the west?

20 A Well, that's a westbound train, westbound
21 train stopped at B-17. Yeah, that could be coming
22 from the west or the north.

23 Q Isn't -- doesn't yarding mean going into
24 the yard?

25 A Yeah, they're going into the yard, yeah.

1 Q And so that's -- a westbound train would
2 be backing into the yard?

3 A It would be a westbound. No, coming from
4 the west is what I said.

5 Q Okay. Coming from the west. Okay. I'm
6 sorry. But you just have to know whether that
7 train symbol operated west or north?

8 A Correct.

9 Q And a train that's extremely slow yarding
10 is not necessarily a situation that a dispatcher
11 can control for?

12 A Can I clarify something?

13 Q Sure.

14 A Because I think you just said that they're
15 operating to the west or north, and they would be
16 operating to the east or south.

17 Q I'm sorry. Let's go clear that up.
18 Appreciate that.

19 So --

20 A Because they're yarding. They're going
21 into the yard.

22 Q So the train is going into the yard, and
23 what we don't know, without knowing about the
24 train symbol, without having more information
25 about where the train came from is whether it was

1 coming south from -- from the north into the yard
2 or east from the west into the yard?

3 A Correct.

4 Q Okay. Fair enough. Thank you.

5 So my next question was this train was
6 apparently extremely slow yarding?

7 A Yes.

8 Q Is that a situation that a dispatcher can
9 necessarily control?

10 A Yeah, absolutely. They can contact the
11 yard before they run the train in to make sure
12 that the line, the switches are lined. They can
13 see if they have a UB man. There's a million
14 things they can do to make that a more smooth
15 move.

16 Q It may be the case that they did all of
17 those things and the train --

18 A Could be --

19 Q -- still was slow?

20 A It could be, it could be, but there are
21 things they can do.

22 Q Understood. Yeah.

23 And it's also the case that had -- had the
24 dispatcher held the train somewhere else waiting
25 for those things to happen, the lining of the

1 switches or whatever, the train could have caused
2 delays somewhere else?

3 A Correct.

4 Q A Metra train might have had to run around
5 the train at another location?

6 A True.

7 Q And we don't know what consequence of
8 different dispatching decisions -- what
9 consequences of different dispatching decisions
10 there would have been because those other things
11 didn't happen?

12 A Correct.

13 Q And that would be true for all of these
14 delays essentially, correct?

15 A Right.

16 Q Okay. Wrapping up February, on the 29th
17 at B-12, it appears 2717 was delayed, and the
18 reference is Q165, 9300 feet. Again, that's B-12,
19 so that's east of the yard?

20 A Yes.

21 Q Do you have a general sense from your
22 experience how often it is the case that there are
23 delays caused to Metra by CP trains that originate
24 at Bensenville heading west or terminate at
25 Bensenville heading east?

1 A I wouldn't be able to give you a -- I
2 wouldn't be able to tell you the number. I'm --
3 you know, I don't work in direct contact with
4 them. I can only tell you the numbers that I know
5 about.

6 Q Okay. Is -- would it -- do you have a
7 sense of whether those situations that I'm just
8 asking about are a major source of the CP-caused
9 delays to Metra trains?

10 A Based on the conversations that we have
11 with the CP, there are some things that I get in
12 talking to them that lead me to believe that some
13 of this is con- -- could be controlled through
14 additional communication with the yard, maybe
15 better utilization of some bigger windows.

16 There are times when, in some of these
17 cases, and I can't give you a specific without
18 going back and looking at some different notes
19 based on those meetings -- but there are times
20 when they utilize a window where they have got a
21 15-minute window, and behind that there's a
22 two-hour gap between trains, and so some of that,
23 you know, you think, well, maybe I could have
24 waited -- at least from our perspective, maybe I
25 could have waited 15 minutes and run it in the

1 two-hour window.

2 And we convey those things in those
3 meetings, and then we usually see that there is an
4 adjustment or an attempt to use less windows. Is
5 it perfect? No. Can they do it all the time?
6 No.

7 Q And is it also true that -- to take your
8 example of a 15-minute gap and then a 2-hour
9 window, that the times you see the delays
10 are -- are the times -- are not the times when the
11 CP dispatcher has used the 2-hour window?

12 A Absolutely. So what we know is what we
13 see and what we feel in the way of an impact. We
14 don't know how many times they do it right. We
15 don't. We have no idea.

16 Q But you know when Metra trains are not
17 delayed?

18 A Correct.

19 Q And most Metra trains are not delayed,
20 right?

21 A That is a true statement.

22 Q Okay. Now, when you were describing the
23 potential for different dispatching decisions to
24 reduce delays, were you -- you were referring to
25 the delays from CP freight trains generally,

1 right?

2 A Correct.

3 Q Not limiting that to trains moving between
4 Bensenville and the west?

5 A No, not limiting Bensenville to the west.

6 Q Okay.

7 A Freight movements in general.

8 Q What I was trying to get a sense of, and
9 maybe -- maybe you don't have the sense, is of all
10 of the CP issues that you reflected in your tables
11 and are aware of from your job, what portion of
12 the issues, approximately, if there's any way you
13 would characterize it, would be from trains that
14 are moving between the west and Bensenville and
15 terminating at Bensenville or originating at
16 Bensenville?

17 A As opposed to operating between
18 Bensenville and A-5?

19 Q Or going past Bensenville to the east,
20 heading to eastern connections or IHB or BRC.

21 A It's -- estimation, 40 percent.

22 Q You think, if we look through this table,
23 we'd find 40 percent of the time it was --

24 A Depending upon whether those trains are --
25 whether those trains are coming from the west, I

1 think it's somewhere between 30 and 40 percent.

2 Q Do you know what percentage of trains that
3 operate into and out of Bensenville today are
4 going to the north rather than to the west?

5 (Whereupon Ms. Rosen exited the deposition
6 proceedings.)

7 THE WITNESS: I do not.

8 BY MR. MEYER:

9 Q The only way to answer that question more
10 systematically would be to tally up the delays in
11 your charts and use the cause information the way
12 we talked about a few minutes ago to identify what
13 we could about which train caused the delay?

14 A And you'd have to identify where the
15 trains came from or where they were destined.

16 Q Right. So you'd have to know, for
17 example, whether they -- just pick one here -- on
18 March 28th?

19 A 2020?

20 Q Correct. March 28th, there's a delay from
21 CP 280 stopped on 2 to cut off power and make crew
22 change. So you'd want to know where CP 280 came
23 from, where it was going to, and you'd want to
24 know, I guess, whether it was -- well, maybe let
25 me ask you.

1 If it's on 2 track, cutting off power
2 and making a crew change, then it's not going in
3 the yard; is that right?

4 A I can tell by this delay where that is
5 because it's an eastbound train delayed, and
6 they're waiting for a westbound train because
7 they're single-tracking around this train between
8 B-17 and B-12. So this train is east of
9 Bensenville.

10 Q East of Bensenville.

11 A Right.

12 Q But, again, we'd have to systematically go
13 through and tally up and there may be some where
14 you just wouldn't know?

15 A Correct.

16 Q There might be others where you could
17 determine that this was an issue caused by
18 something other than a train between Bensenville
19 and west?

20 A Correct.

21 Q And do you know, have a sense of, for
22 delays that relate to freight trains originating
23 in Bensenville heading west or terminating at
24 Bensenville from the east -- from the west, how
25 much of the time a delay caused by those trains

1 relates to an issue involving getting into and out
2 of the yard?

3 A I wouldn't be able to give you an answer
4 on that.

5 Q Again, we'd have to tally that up?

6 A Yeah, I'd have to tally that up. I
7 wouldn't know.

8 Q But if we see -- if we see explanations
9 that talk about yarding at Bensenville, that's
10 going to be a situation that involves the time
11 taken to get into or out of the yard?

12 A Correct.

13 Q Okay. Let me ask you about a particular
14 delay in May of 2020 that's on this table.

15 So I'm trying to figure out the entry for
16 May 14th, or it's actually two entries for
17 May 14th.

18 A Uh-huh.

19 Q You have got a delay to 2216 and a delay
20 to 2219. The first one is classified as a DD and
21 the second one a DD 1?

22 A Correct.

23 Q And the cause is listed as:

24 CP 470 doubling. Could not set brakes due
25 to offline unit.

1 What is an offline unit?

2 A I don't know what an offline unit is.

3 Q Okay.

4 A Okay.

5 Q So "could not set brakes," is that a
6 mechanical issue?

7 A Yes.

8 Q And so I see in the last column you've got
9 this coded as an NC, so "not controllable."

10 A Correct.

11 Q But it's classified as a DD. That seems
12 inconsistent to me based on our prior discussion,
13 but perhaps you can explain.

14 A So I would have to go back and see if --
15 how it is coded in TOPS, because it's possible
16 that we didn't have the additional information
17 initially and it was changed in TOPS to a DE, but
18 I didn't change it in my table.

19 Q Okay.

20 A It looks like I did change the N to not -
21 changed it from controllable to noncontrollable,
22 but then I did not change the code in here.

23 Q So that kind of cause is appropriately
24 considered as a noncontrollable.

25 A Yes.

1 Q I've got one I want to ask you about in
2 June of 2020. Actually, two, sorry. First one is
3 June 14th.

4 A Um-hmm.

5 Q And by the way, June is a month where
6 you've got Milwaukee North headings but nothing
7 under the headings. Does that mean there weren't
8 delays?

9 A That means there were no delays, yes. I
10 kept those as a placeholder. But no delays.

11 Q Okay. June 14th, you've got at B-17, the
12 cause is UP 199?

13 A Again, I'll explain. I have to put in the
14 information that's provided to me. It's possible
15 that it was -- this is an assumption, that it was
16 a CP 199, but when it was provided to me and it
17 was entered in the TOPS, it was entered at UP 199.

18 So I put it as what I see. It's possible
19 it was a CP 199, which I believe is a valid CP
20 designation.

21 Q I think you're right about that.

22 A Okay.

23 Q I don't know what is the right answer to
24 what goes in the "cause" row, but I believe there
25 is a 199 symbol, for what it's worth.

1 The question about June 20th.

2 A Okay.

3 Q Train 2718, 20-minute delay, and it says:
4 Late turn from delay 2711. See above
5 delay.

6 A Uh-huh.

7 Q Sounds like that's one of those indirect
8 delays?

9 A There should be a secondary, D-1.

10 Q Okay.

11 A Still would fall under freight, but it
12 would just be designated as a secondary, not a
13 primary.

14 Q Got it. If you could turn to September of
15 2020, September 9, we have got a delay to 2248.
16 No location given. It's coded as an RF.

17 So that -- we think that has to do with
18 dispatching of a Metra train, not interference
19 with a freight train?

20 A Yeah, they're dispatching 2248. 2248 is
21 unable to verify their DOB, and verifying the DOB
22 is necessary to move, and they couldn't verify it
23 with -- and they would be verifying their DOB with
24 the CP dispatcher. That's why it's an RF.

25 Q So the date of birth, DOB is date of

1 birth? Is that a -- what requirement -- it's some
2 kind of rules requirement, I gather?

3 A It's daily operating bulletin.

4 Q Oh, it's -- I'm sorry. Daily operating
5 bulletin. Okay. I'm glad I asked.

6 So this was a delay that we think occurred
7 at the beginning of the run?

8 A Correct. But that verification is with
9 the CP dispatcher, and they were unable to. They
10 can't depart until they have it.

11 You dropped your microphone.

12 Q Thank you.

13 I've got another question for you about
14 October 2020.

15 So on the 13th of October, I see two
16 delays. It looks like they're related to one
17 another.

18 The Train 2208 is listed as: Timing out,
19 wrong lineup at Elgin.

20 What would that -- what does that mean?

21 A Timing out, so if you line up a signal,
22 and it's not the signal that you needed to line up
23 to be able to move the train, you have the ability
24 to communicate with the train and take the signal
25 down. There's a time-out mechanism for safety

1 reasons, and you have to time it out before you
2 can display the correct signal.

3 Q So if you --

4 A Those timers are different based on what
5 type of traffic. If it's on the electric
6 district, because you've got shorter trains that
7 can stop quicker, it's a shorter time-out. If
8 you've got big freight trains at high speeds,
9 those time-outs could be up to 11 minutes long.

10 Q Okay. And in this case, it was an
11 eight-minute delay, and what you're referring to
12 is, reading this, the dispatcher apparently made
13 some mistake in --

14 A Uh-huh.

15 Q -- lining up the tracks for the 2208
16 train, and then in order to fix the mistake, there
17 had to be this time-out on the signal before the
18 new route could be lined?

19 A Correct.

20 Q And then the next train, the 2210, it
21 says:

22 Following delay 2208. That's an RF(1).

23 A Right, that's correct.

24 Q It's an RF(1) not because it's flipping at
25 the end of its route, but for some other reason?

1 A It's still a secondary. Flip was an
2 example that I used. The term -- the technical
3 term is secondary.

4 So this train is not delayed for the
5 incorrect route. This train is delayed following
6 the train that incurred the incorrect route.

7 Q I see. Okay. There's only one mistake by
8 the dispatcher?

9 A One mistake causes two turns, yeah.

10 Q So if we see a 1, we know that's -- if we
11 are trying to identify the number of mistakes, we
12 don't count the 1s?

13 A We do.

14 Q Well, I understand. But because it's a
15 delay to your train, I understand that.

16 The mistakes by CP, those would not be
17 included?

18 A Correct.

19 Q Okay. All right.

20 MR. MEYER: Could we just take a minute,
21 go off the record.

22 THE VIDEOGRAPHER: Off the record,
23 12:32 p.m.

24 (Recess taken from 12:32 p.m. to
25 12:34 p.m.)