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BY ELECTRONIC FILING

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

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

Dear Ms. Brown:

Applicants briefly respond to Metra's Motion for Leave to File Reply (METR-12), filed late Tuesday, August 1. Metra acknowledges that the Board has not yet ruled on its dual motion of last week (METR-11) seeking (a) to amend the procedural schedule to permit Metra a fourth attempt at presenting RTC modeling evidence and (b) the right to file a sur-reply to certain aspects of Applicants' July 12 submission. Applicants' opposed Metra's motion on July 25, 2022. *See* CP-56/KCS-42. Not having received a green light from the Board, Metra has taken matters into its own hands and opted to proceed ahead to file more than 150 pages of "Reply" to Applicants' "Rebuttal" (METR-13), accompanied by a five page motion reiterating Metra's desire for permission to do so.

With respect, Metra's conduct shows why the Board should adhere to its carefully-crafted procedural schedule and not condone repeated efforts by non-applicants to commandeer that schedule for their own advantage. As Applicants explained in their previous reply to Metra, everything Applicants filed on July 12 on the issues raised by Metra was a proper response to Metra's evidence and – as Metra acknowledges – was Applicants' "rebuttal in support of the Application." Applicants are entitled to "close the record" on all of those issues, in the sense of having the right to respond *with evidence* to the evidence offered against the Application. Metra took three swings at offering its evidence: on March 15, on June 9, and again on July 8.

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Applicants responded to all of this on July 12. *See, e.g.*, CP-55/KCS-41 (filed July 20, 2022) at 2 & n.1 (citing authorities reflecting the Board’s position that the right to close the record belongs to primary applicants).

Enough is enough.

Metra’s counsel will have the chance to make all of the good faith arguments it wishes in its final brief (due October 14) based on evidence in the record (and that is really all that most of Metra’s submission amounts to, albeit supplemented with witness argumentation and ignoring the 30-page limit on briefs). But if Metra is allowed to submit this impermissible additional round of sur-rebuttal evidence – and even more so if Metra’s witness Crowley is allowed to “submit revised simulations and results” as he suggests he plans to do (METR-13, Sur-Reply Verified Statement of Thomas Crowley and Robert Mulholland at 6)¹ – the procedural schedule will be a charade. Applicants will need to consider what additional evidence – if any – they would have offered on July 12 had this new Metra evidence been in the record, and would be entitled to file a response, consistent with their right to close the record. Then Metra will no doubt demand the right to a sur-sur-sur-rebuttal, and so on. Applicants will not have the right to close the record if Metra usurps it, or if the record never closes.

To be sure, the issues that Metra raises about the impacts of the Transaction on Metra’s passenger operations are important ones. But at some point Metra needs to take “yes” for an answer – as in, yes, Applicants are aware of the importance of Metra’s passenger operations and are confident that the Transaction will not impact Metra’s operations negatively. Metra’s continual re-argument betrays its desperation to use this Transaction as (another) excuse to try to re-write the governing contracts so as to grant Metra unilateral dispatching control. Neither the facts nor the law support Metra’s demands, and an endless litany of argument will not change that.

Applicants also note that, while Metra’s counsel is entitled to file a brief in this case, Metra should be admonished to stick to the evidentiary facts, not make them up as suits their desired world view. One striking case in point: in the narrative portion of Metra’s proposed submission (METR-13 at 17), Metra’s counsel contends that “Metra has already had a taste of the *increase in interference* to be expected from the Transaction with *current interference* from

¹ Mr. Crowley’s purported “issues” with Applicants’ corrections to his RTC modeling (*id.* at 4-6) show why further back-and-forth debate about these issues would be fruitless. None of those issues has any merit, but each instead demonstrates that Mr. Crowley fundamentally lacks an understanding of how to accurately model CP’s freight operations, as shown in Applicants’ preliminary responses to Mr. Crowley’s issues as set forth in Appendix A hereto. Applicants reserve the right to further respond to the arguments and “issues” raised by Metra and its witnesses, should the Board grant Metra’s Motion for Leave to File.

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the new ‘interline’ intermodal train operated between KCS and CP” (emphasis added). As evidence of this supposed “interference,” Metra cites the testimony of its witness Steve Cork (at ¶ 6), but Mr. Cork is seemingly unaware of the purpose to which his testimony was put. His testimony is merely that “Metra has already had a taste of what to expect from the Transaction with the new ‘interline’ intermodal train operated between KCS and CP.” In other words, Metra’s counsel has chosen to (twice) insert the words “interference” into the sworn testimony provided by the witness despite the fact that the witness’ testimony does not mention “interference” at all. As with the other facts relating to the current and future operation of CP (and CPKC) freight trains on lines shared with Metra, when the unfiltered facts are examined with care, there is zero basis for the relief Metra seeks.

Metra’s motion for leave to file METR-13 should be denied and Metra should be admonished to adhere to the evidence in the record.

Please contact me with any questions.

Respectfully submitted,



David L. Meyer

*Attorney for Canadian Pacific Railway
Limited*

Attachment

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

APPENDIX A
APPLICANTS' PRELIMINARY RESPONSES TO MR. CROWLEY'S LIST OF "ISSUES"

Crowley/Mulholland "Issue" (Sur-Reply VS at 4-6)	Applicants' Preliminary Response
1. CP used timetables rather than track charts to develop siding lengths. This is counter to standard procedures used by RTC modelers because track charts are far more granular and include other critical inputs such as grade and curvature data that are also required RTC inputs. Overwriting siding length data from track charts with alternate siding length data from timetables is not a standard practice. The siding lengths in timetables often differ from the siding lengths in the more detailed track charts, because the two (2) documents are used for different purposes. The level of detail included in the track charts is not needed by railroad personnel who use timetables in the normal course of business. This is clear from the round numbers that are often included in the timetables. For example, the timetables indicate that: a. The siding at Harpers Ferry is precisely 10,500 feet in length; b. The siding at Edmore is precisely 7,900 feet in length; c. The siding at Brownsville is precisely 10,200 feet in length; d. The siding at Bellevue is precisely 10,200 feet in length; e. The siding at Turkey River is precisely 12,200 feet in length; f. The siding at MP 75 is precisely 12,200 feet in length; and g. The siding at Green Island is precisely 11,500 feet in length. Common sense dictates that these lengths are not representative of the actual physical dimensions of the real-world siding. It is clear that CP knows it failed to produce accurate track charts in response to Metra's request, and CP also knows it cannot now supplement the record with accurate track charts. Therefore, CP is forced to proclaim that the timetables contain accurate information, and further that Metra should have known not to trust the standard document used to develop infrastructure inputs, the track charts, and instead rely on a surrogate data source that CP knows contains inaccurate siding length data. Most of the alleged errors depicted in Figure 4 at page 9 of the CP RTC Report (also presented as Figure 11 at page 32 in the Elphick RVS and Figure 13 at page 163 of 314 of Applicant's Response)	• There is no "standard procedure" for modeling siding length. As per the Berkeley Simulation Software RTC Manual (at page 35), Section 3.2 ("Basic Network Elements" under the subheading "Network data sources": <i>"RTC networks require data to be derived from a variety of sources ranging from track charts to operating timetables."</i> The data must be entered accurately in order for trains to run properly." • Mr. Crowley's apparent assumption that CP's track charts always contain definitive data on siding length is simply incorrect. ○ Changes in CP's physical network through the addition or extensions of sidings are not necessarily immediately reflected in physical track charts, but are reflected in geodatabases used in conjunction with PTC and in CP's general orders and timetables that govern the safe operation of the railroad. ○ During the discovery process in this proceeding, Applicants repeatedly informed Metra that CP's track charts were not necessarily the most up to data source of information on siding lengths, and needed to be considered in conjunction with other data sources, including geodatabases and timetables (which were also provided to Metra). • Mr. Crowley's critiques of CP's timetable information are misguided and incorrect. ○ At CP, siding length as depicted in the timetable is not an "alternate siding length" – it is the official siding length unless otherwise noted in a General Order. General Orders are bulletins issued in advance of project completion to inform operating personnel of a change and when that change is effective; they remain in effect for the specific location until the timetable is officially updated and issued. This process of updating timetables is independent and not linked to the process for updating track charts and track profile data. ○ The siding lengths in these documents are used by operating personal (train dispatchers and train crews) for meeting and passing trains. In RTC modeling this is what the system logic would use to make decisions on what trains will fit in the sidings for meet/pass. The fact that the lengths are not expressed with precision is

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are related to CP’s improper use of timetables in lieu of track chart data.	irrelevant to the reliability of this information: for example, dispatchers and operating personnel know that a 10,000’ train will fit in a siding that the timetable describes as 10,500’ even if the precise physical dimension is 10,503’. ○ In any event, Items (c) through (f) are future projects not yet constructed, and therefore are not in any timetable despite Mr. Crowley’s implication. The lengths shown are Applicants’ planned lengths as reflected in the Operating Plan. ○ Items (a), (b), and (g) (Harpers Ferry, Edmore, and Green Island) are existing sidings, and the correct length is listed in the timetable. • The last sentence of Mr. Crowley’s point – which asserts that Applicants used timetables “improper[ly]” – confirms that Mr. Crowley is not seeking to model real-world conditions but to present made-for-litigation argumentation. When the most accurate and up-to-date information on siding length is contained in CP’s timetables, it would be “improper” to ignore them.
2. CP assumed that CP freight trains will operate on schedule, when the train event data CP provided in response to Metra’s requests for production demonstrate clearly that they do not achieve this standard in the real world. CP ignores its own operating data and instead relies on its scheduling data, which means it modeled optimal, rather than realistic, operating scenarios. This is particularly egregious in light of CP’s acknowledgement that: “Recognizing the dangers of ‘garbage-in, garbage-out,’ analysts who use modeling software customarily validate the modeled Base Case against known, real-world operating metrics to establish a baseline.”	• Mr. Crowley is incorrect. Applicants’ corrections to Mr. Crowley’s model <i>did not</i> assume that freight trains operate on schedule. Applicants used scheduled departure times only as a baseline target, and instructed the RTC model to randomize departure times (with a variation of 2-6 hours from scheduled time) to more accurately reflect real-world variations in train operations. • Mr. Crowley’s approach, by contrast, deviated from standard modeling practice by forcing the model to use measured “actual” departure times without deviation, which had the effect of treating operations as if they were always identical to the day on which the actual times were observed. This is not consistent with real world train operations.

3. Similarly, CP assumed that CP freight trains will dwell for shorter periods in the model than their event data shows they do in the real world. As above, CP assumed away all real-world inefficiencies that are chronicled in its event data, and instead modeled the “minimum dwell” reflected in its operating schedules – a standard it does not meet in the real world.	• Mr. Crowley is similarly incorrect about this issue. Applicants did not force “shorter dwells” for events like crew changes. Instead, consistent with sound RTC modeling, Applicants used anticipated minimum dwell times and instructed the model to increase those dwells randomly by up to 30 minutes to more accurately reflect real-world variations in train operations. • Mr. Crowley’s approach, by contrast, forced his model to build in actual measured delays (by dwelling trains at prescribed locations for pre-determined amounts of time). This approach was flawed for two fundamental reasons: ○ First, even if the dwell times Mr. Crowley used had accurately reflected the dwell associated with the events at issue (e.g., crew changes), forcing trains to incur measured dwell is inconsistent with sound modeling because it assumes away the variations associated with real-world railroading. ○ Second, Mr. Crowley misunderstood CP’s train data and overestimated the times associated with these dwells, thereby preventing the RTC model from properly dispatching the railroad and compounding perceived delays. To illustrate: ○ Mr. Crowley appears to have calculated “dwell” as the difference in time between two sequential AEI readers. However, these readers are often some distance apart, meaning that the perceived “dwell” in fact reflects the movement of a train from one reader to the next, rather than a train standing still. ○ For example, at Portage, WI there are two AEI readers, one at MP 183 and another at MP 174. Were an eastbound train to pass the AEI reader at MP 183 at 1200, stop at Portage for 15 minutes to complete a crew change, and wait for 20 minutes for a westbound to arrive, departing by the AEI reader at MP 174 at 1255, Mr. Crowley would wrongly calculate 55 minutes of dwell. In fact, there is 15 minutes of crew change dwell, plus 20 minutes required to move the nine miles between MP 183 and MP 174, plus 20 minutes of delay awaiting the arrival of the westbound train. ○ In this example, the decision to hold the train for a westbound to arrive would be one made by a CP dispatcher in the real world (and
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	by the dispatch logic in RTC in the modeled world) and <i>would not</i> reflect dwell time. By "hardcoding" actual times and attributing them to "dwell," Mr. Crowley misinterpreted CP's data and forced his RTC simulation to hold every train for the prescribed time, while also and separately incurring run times between AEI readers and delays associated with train meets. This had the effect of generating unrealistic compound delays.

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4. 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. CP also used this adjustment to misrepresent Metra's position. Metra does not “attribute all delay to the presence of freight.” Metra specifically claimed that it has the right to increase its passenger traffic volumes, and that this reality must be considered in a proper evaluation of the impact of CP's proposed freight volume increases, which CP did not do.	• Mr. Crowley’s purported comparison between a Base Case that had Metra’s reduced COVID-period schedule and a Future Case that had Metra’s expanded pre/post-COVID schedules was a major failure that made it impossible for his simulation to isolate the impact (of any) of additional CPKC freight trains. • Applicants’ correction has nothing to do with Metra’s “position” concerning its right to increase passenger train volumes. Metra’s rights under existing contracts are addressed by other witnesses (<i>see, e.g.,</i> Gameiro R.V.S.), and in any event Applicants have made clear they will not object to Metra’s return to its pre-COVID schedules. Whatever position Metra takes on that issue, a mismatch in passenger train counts between the Base and Future Cases (as Mr. Crowley proposes) has no place in RTC modeling. Changing the number of Metra trains between the Base and Future Case lead to incremental delays that cannot validly be attributed solely to the addition of freight traffic, and thus confounds the purpose of the modeling (which is to identify Transaction-related effects). • Applicants’ corrections used the same (pre/post-COVID) Metra schedule in both the Base and Future Cases, allowing a comparison between a future with increased Metra service and no Transaction with one that includes Transaction-related freight train increases. There is nothing “fudged” about this comparison. It shows that, even with a full pre/post-COVID Metra schedule, the additional freight trains will cause no incremental delay to Metra trains. • Mr. Crowley’s calculation of delays to Metra trains in fact do not distinguish between delays caused by freight trains and those caused by Metra’s own passenger trains, despite the RTC output files clearly spelling out the causes of observed delays (as shown in Applicants’ corrected RTC simulation).

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5. CP eliminated organic growth from the future case because, it alleges, the growth is not merger-related. This does not change the fact that organic growth, like all growth, will need to be accommodated and should be modeled.	• Mr. Crowley is incorrect. His simulation imbedded in the Future Case “organic growth” in CP traffic volumes unrelated to the Transaction. Contrary to Mr. Crowley’s assertion, Applicants’ corrections to Mr. Crowley’s model did not remove any trains from his Future Case simulation, and thus included the same “organic growth” that Mr. Crowley modeled. • In this respect, Applicants’ corrections to Mr. Crowley’s model overstate the impact of the Transaction (since only Transaction-related traffic changes, and not organic growth, are appropriately considered in assessing Transaction-related impacts). • In addition, it is worth noting that Applicants’ corrections to Mr. Crowley’s model added back in the trains that Mr. Crowley had “disabled” (or removed) in an effort to make his simulation run. Once Mr. Crowley’s errors were corrected, the RTC simulation ran without difficulty based on all of the Base and Future Case trains (including traffic associated with organic growth).
6. Similarly, CP failed to acknowledge that the train event data it provided in response to Metra’s requests did not contain event data for foreign trains, and CP made no effort to include foreign train traffic in its models. This is another example of CP’s failure to model known, real-world operations.	• Applicants’ corrections to Mr. Crowley’s model did not remove or alter any of the “foreign trains” modeled by Mr. Crowley. (CP’s train event data does not reflect foreign train movements on the lines shared with Metra, but Metra’s PTC data does, and that data was presumably fully accessible to Mr. Crowley.) • In any event, the Transaction will not affect the number of foreign trains operating on any of the lines modeled.
7. CP added signaling to its simulations, and falsely claimed that our simulations could “potentially result[] in train bunching.” This is a red herring argument. Our modeling was favorable to CP.	• Applicants added signaling on the lines shared with Metra to reflect the fact that that signaling exists in the real world. • The purpose of a model is to be realistic and accurate and not to be “favorable.”

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8. CP claims freight train routing included in our simulations is inefficient. However, our routing was determined based on event and loading/unloading data provided by CP. Deviation from real world routing in favor of scheduled routing reflects another instance of CP modeling optimal, rather than real-world operations. To the extent that CP believes we may have misinterpreted the operating data it provided, it should be noted that CP included a statement in its report regarding its “inability to discuss operations with Metra personnel in this litigation setting.” Again, CP expected Metra to know when data CP provided was inaccurate, but, for obvious reasons, does not hold itself to the same standard.	• Mr. Crowley is incorrect. Applicants’ corrections to Mr. Crowley’s model did not deviate from real-world freight train routings; instead, they removed errors that should have been obvious to Mr. Crowley – such as coding a train to enter a storage track for a crew change. An expert modeler of freight railroads would know where events do and do not occur, including that a freight train would not edge into a storage track with half the train hanging out on the mainline to conduct a crew change. • These errors stemmed from Mr. Crowley’s fundamental misunderstanding of CP’s train event data, which does not include specific track routing between two AEI readers. For example, at Bensenville there are AEI readers that log the time a train arrives or departs. The AEI readers are positioned on Metra 1 and 2 on the Elgin Subdivision to the west of B17, the Bryn Mawr connector to the UP to the north of B17 and Metra 1 and 2 to the west of B12. There are multiple track routes a train can use between these locations, and thus the train data do not provide information on the actual route the trains took through Bensenville.
9. CP complained about Metra claims that “CP will likely reroute Marquette traffic via Chicago.” This is another red herring argument, because we did not reroute these trains, we simply left them out of the model (another instance where our modeling was favorable to CP.)	• This is not a critique of Applicants’ corrections to Mr. Crowley’s model. • Applicants did not claim that Mr. Crowley’s model actually rerouted CP trains from the Marquette Subdivision, but Applicants’ did respond to Metra’s claim that CPKC would do so. As Applicants’ corrected modeling shows, that would not happen.
10. CP’s statements about our lack of QA/QC are disingenuous. CP knows well that our undertaking was a monumental exercise given the tight time frame, and that this was compounded by their provision of outdated data for us to use as inputs into the model.	• This is not a critique of Applicants’ corrections to Mr. Crowley’s model. • Mr. Crowley’s response appears to acknowledge the lack of quality assurance/quality control in his work. And as Applicants’ corrected modeling shows, Mr. Crowley’s errors were not corrected despite three submissions over the course of five months (from March through July 2022). • The lack of QA/QC was striking even in March: had Mr. Crowley simply opened up CP’s current timetable and compared it to the sidings he included in his model, he would have noticed the discrepancies and had an opportunity to correct by adding sidings and siding extensions that were not reflected on the track charts he used.

<u>Crowley/Mulholland “Issue” (Sur-Reply VS at 4-6)</u>	<u>Applicants’ Preliminary Response</u>
11. CP insists that we should have been able to model planned Bensenville infrastructure based on “the conceptual design” provided in discovery. The document provided is insufficient for purposes of RTC modeling. For example, the referenced document does not include connecting milepost information or any switch or turnout milepost data.	• This is not a critique of Applicants’ corrections to Mr. Crowley’s model. • Applicants’ corrections to Mr. Crowley’s model to add extended arrival and departure tracks to Bensenville Yard were based on the same design documentation that had been provided to Mr. Crowley. These changes did not involve any changes to mainline switches/turnouts.