

305211

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

**CANADIAN PACIFIC RAILWAY LIMITED, ET AL.
- CONTROL -
KANSAS CITY SOUTHERN, ET AL.****ENTERED**
Office of Proceedings
August 31, 2022
Part of
Public Record

**NORFOLK SOUTHERN RAILWAY COMPANY'S MOTION TO HOLD DEPOSITION
IN ABEYANCE**

EXPEDITED CONSIDERATION REQUESTED

Norfolk Southern Railway Company ("NS") hereby joins the Motion by the Applicants to hold in abeyance and ultimately quash the deposition of Professor John W. Mayo ("Applicants' Motion to Hold in Abeyance").¹ CSX Transportation, Inc. ("CSXT") continues to abuse the Board's review of the proposed CP-KCS Transaction in its attempt to re-litigate the formation of the Meridian Speedway, LLC. CSXT's continuing mischief must be stopped.² On July 20, 2022, the Applicants filed a Motion to Strike that included CSX Transportation, Inc.'s Response to Comments and Responsive Applications ("Applicants' Motion to Strike").³ If Applicants' Motion to Strike is granted, then any potential purpose for CSXT to depose Professor Mayo has been mooted and his deposition should be quashed.

If Applicants' Motion to Strike is granted and the deposition of Professor Mayo is quashed, then NS sees no need to take the deposition of CSXT's experts, Professor Julie M.

¹ Applicants' Letter to Ms. Brown, STB Docket No. FD 36500 (filed Aug. 26, 2022).

² On August 24, 2022, CSXT produced documents responsive to NS's First Set of Discovery Requests, served April 1, 2022. This late production was in violation of CSXT's voluntary commitment and Administrative Law Judge McCarthy's order requiring CSXT to produce all responsive documents by June 29, 2022. If Applicants' Motion to Strike CSXT's July 12 filing is not granted, CSXT's late-produced documents would be subject to a motion to preclude.

³ Applicants' Letter to Ms. Brown, STB Docket No. FD 36500 (filed July 20, 2022).

Carey and Dr. Ramsey Shehadeh and would withdraw the deposition notices. However, because NS does not know how the Board will rule on the Applicants' Motion to Strike CSXT's inappropriate filing, NS noticed the depositions of CSXT's experts (and is incurring the costs of continuing to litigate an issue that is not relevant the CP-KCS Proceeding). Faced with the uncertain outcome (and timing) of the Board's resolution of Applicants' Motion to Strike and Motion to Hold in Abeyance, NS has no option other than to proceed with the depositions of Professor Carey and Dr. Shehadeh unless and until the Board grants the Applicants' Motion to Strike and quashes the deposition of Professor Mayo.

NS reiterates its support for Applicants' Motion to Strike the inappropriate filing of CSXT⁴ and respectfully requests that the Board issue an order holding in abeyance the deposition of Professor Mayo until the Board resolves Applicants' Motion to Strike. NS requests a ruling on the Applicants' Motion to Hold in Abeyance before Professor Mayo's deposition, which is scheduled for September 15.

Respectfully submitted,

/s/ Carrie C. Mahan

Carrie C. Mahan

Counsel for Norfolk Southern Railway
Company

⁴ Norfolk Southern Railway Company's Rebuttal in Support of Its Amended Responsive Application, STB Docket No. FD 36500 (filed Aug. 11, 2022) at 6 n. 17 ("NS agrees that CSXT's Response was improper and should be stricken.").

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August 2022 the above Motion to Hold Deposition in Abeyance has been e-filed via the STB's e-filing system and served via email or regular postage pre-paid mail on all parties of record in this proceeding.

/s/ Daniel Baquet

Daniel Baquet

August 31, 2022