

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 36500

ENTERED
Office of Proceedings
September 14, 2022
Part of
Public Record

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

CSX TRANSPORTATION, INC.'S NOTICE OF INTENT TO PARTICIPATE IN
THE SEPTEMBER 28, 29 AND 30 HEARING, IDENTIFICATION OF
SPEAKERS ON BEHALF OF CSX TRANSPORTATION INC., AND REQUEST
FOR ADDITIONAL TIME FOR PRESENTATION

Under this Board's July 22, 2022, Order¹ (the "Order"), CSX Transportation, Inc. ("CSXT") submits this Notice of intent to participate with six speakers in the September 28, 29, and 30 public hearings. CSXT also requests ninety (90) minutes for the combined presentations of the six speakers. All six speakers intend to appear in person.

CSXT requests that its speakers be allowed to appear on Friday, September 30, 2022, the only day that all can be present simultaneously.

CSXT has sought several conditions. Subject to the Board's interest in the other conditions, CSXT's speakers will principally address its requested conditions regarding the line between Dallas and Meridian known as the Meridian Speedway.

A. Identification of CSXT's Speakers and the Topics They will Address.

CSXT's presentation would be made by these speakers.

1. Paul A. Cunningham, counsel to CSXT, will introduce CSXT's speakers. Subject to

¹ Canadian Pacific Railway Limited – Control – Kansas City Southern, Decision No. 22, FD 36500 (served July 22, 2022).

- the Board's interest in CSXT's other requests, he will focus especially on a) how the public interest in the proposed CPKC transaction ("Proposed Transaction") can be magnified by removing the unlawful and unreasonable barriers to intermodal rail competition to, from, and over the Meridian Speedway erected by perpetual NSR exclusivity and unreasonably closed gateways. Competition will then be free to improve service, provide competitive prices, grow volume, increase employment, and strengthen the economy; b) why CPKC will not be harmed by the removal of those barriers but will have more competitive opportunities; c) why the harm from those barriers would be exacerbated and could be perpetually enshrined if the Board does not remove them in this proceeding; and d) why the Board is authorized under ICCTA to remove those barriers to assure the Proposed Transaction is consistent with the public interest.
2. Maryclare Kenney, CSXT's Vice President of Intermodal Services, will provide factual testimony regarding a) the requirements for efficient provision of intermodal rail service, b) the adverse effect of the existing barriers to competition to, from, and over the Meridian Speedway imposed on existing and prospective intermodal rail competition to and from origins and destinations in the Western United States and Mexico to and from the Southeastern United States; and c) the great potential for more, better, and competitively priced railroad intermodal service over a Meridian Speedway with no NSR exclusivity and open gateways.
 3. Robert Girardot, CSXT's Director of Rail Relations and Port Development at CSXT, whose principal career focus has been on intermodal rail transportation and who

- earlier provided a verified statement,² will provide factual testimony. He will address
- a) the termination by KCS of CSXT's actual and imminent competition for intermodal rail service over the Meridian Speedway before 2006 when KCS and NSR agreed to foreclose competition for most intermodal traffic that benefits from service over the Meridian Speedway; b) the history of competition for that traffic since 2006; and c) in more detail, the competitive options that can be developed if all unlawful and unreasonable barriers to competition for that traffic are removed.
4. Ryan C. Tisch, antitrust counsel to CSXT, will explain a) why application of competition law concepts illuminates the existing barriers to competition for intermodal rail traffic; b) how, from that perspective, removal of those barriers would most benefit the public interest by restoring competition to, from, and over the Meridian Speedway; and c) why, from the perspective of competition law, the objections made by NSR to the removal of those barriers are without merit.
5. Dr. Ramsey Shehadeh, Managing Director at NERA Economic Consulting, who earlier provided a verified statement,³ will provide expert economic testimony regarding the harm to the public interest imposed by the barriers to competition CSXT seeks to have removed, including, especially, the adverse impacts of those barriers on economic output in the Southeast. Dr. Shehadeh will describe the public harms from the exclusivity arrangements to transcontinental traffic and traffic moving from Dallas, TX.
6. Professor Julie Carey, Managing Director at NERA Economic Consulting, who

² CSXT-13, FD 36500, Verified Statement of Robert Girardot (July 12, 2022).

³ CSXT-13, FD 36500, Verified Statement of Dr. Ramsey Shehadeh (July 12, 2022).

earlier provided verified statements,⁴ will provide expert economic testimony regarding a) the competitive effects of the unlawful and unreasonable perpetual exclusivity arrangements and unreasonably closed gateways that create barriers to competition to, from, and over the Meridian Speedway; b) why the barriers agreed to by NSR and KCS were never needed to protect NSR's investment from free riders or otherwise assure NSR an adequate return; and c) how much their continuation after the Proposed Transaction would negatively affect rail competition to and from the Southeastern United States and hamper rail competition with trucks.

B. Request for Additional Time

CSXT is requesting ninety (90) minutes for its six speakers to explain how the Board can free competition to add material additional public benefits to those now projected for the Proposed Transaction. Those opposing these benefits have sought to obscure the substance of the Board's opportunity through irrelevant, complex economic and legal propositions. CSXT's speakers want to remove that obfuscation by illuminating the competitive opportunity from several perspectives.

As the Board is aware, this matter involves a Proposed Transaction valued by Applicants at approximately \$30 Billion.⁵ But, according to Applicants' projections, it would provide only \$200 million of annual public benefits. CSXT-8 at 3.

As set forth in CSXT-8 and CSXT-13, approving the Proposed Transaction without abrogation of the unlawful NSR-KCS Meridian Speedway exclusivity arrangements and other

⁴ CSXT-13, FD 36500, Verified Statement of Professor Julie Carey (July 12, 2022). *See also* CSXT-8, FD 36500, "Exhibit A," Verified Statement of Professor Julie M. Carey and Dr. Albert W. Bremser National Economic Research Associates, Inc. (NERA) (February 28, 2022).

⁵ "Canadian Pacific Railway and Kansas City Southern to Combine," CP and KCS Investor Presentation, March 21, 2021, at 8 (CP-P-00003391).

related barriers to competition would harm the public interest by perpetuating the foreclosure of intermodal rail competition to, from, and over the Meridian Speedway, especially to and from points in the Southeastern United States.

CSXT's proposed conditions and the new competition that will result from their imposition will allow competition to materially improve the public benefits projected by Applicants. That will lead to better service and lower prices for shippers, more volume on the railroads, trucks off the highway, more railroad employment, and a greater opportunity for achieving our national economic policies.

The presentation by CSXT will necessarily be detailed, and the Board will benefit from the additional time requested. CSXT's speakers will endeavor to make their presentations concise, and if the time is not used completely, the Board can re-allocate the remaining time.

Respectfully Submitted,

/s/ Paul A. Cunningham

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