

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 36500

ENTERED
Office of Proceedings
October 24, 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 MOTION FOR LEAVE TO ATTACH
INADVERTANTLY OMITTED DOCUMENTS CITED IN CSXT-13
AS EXHIBITS A AND B TO ITS FINAL BRIEF

With its Final Brief in the above matter (CSXT-17), CSX Transportation, Inc. (“CSXT”) moves for leave to attach two exhibits (6 pages) to that brief and requests that the Board accept them notwithstanding the 30 page limitation on Final Briefs set in Decision 22. *See Canadian Pac. Ry.—Control—Kan. City S. FD36500 et al.*, slip op. at 3 (STB served July 22, 2022). The exhibits are two highly confidential documents produced by Norfolk Southern Railway Co. (“NS”) and referenced and cited in CSXT-13 (CSXT’s July 12, 2022, Response to Comments and Responsive Application). However, the documents were inadvertently omitted from the papers submitted with CSXT-13. To correct that oversight, and to provide the Board with a full record, CSXT submits them as Exhibits A and B to its Highly Confidential Final Brief.

The documents submitted as Exhibits to the Final Brief are:

- 1) Exhibit A – A four-page Memorandum from M.R. McClellan to K.B. McQuade, Subject: Kudzu, NS00006569-72 (dated April 4, 2005). This document was referenced and cited at p. 60 and n.163 and at p. 61 and nn. 165-67 of CSXT-13. It is again being referenced in the Final Brief at p. 13 n. 36.

- 2) Exhibit B – One page from “Proposed NS-KCS Joint Venture: Chairman’s Talking Points,” NS00005474 at NS00005479 (dated May 12, 2005). This document was referenced and cited at p. 42 and n.113, and at p. 61 and n.168 of CSXT-13, It is again being referenced in the Final Brief at p. 13 n.37.

CSXT’s Final Brief is limited to 30 written pages. However, during preparation, CSXT realized the two documents described above had not yet been provided to the Board. To permit the Board to review those documents and have a complete record, CSXT moves for leave to file them as Exhibits A and B to the Final Brief, which would extend its page length beyond the 30 page limit.

Neither Applicants nor NS will be prejudiced by the inclusion of the documents as exhibits to the Final Brief. Both were produced by NS in discovery and specifically referenced and cited (as detailed above) in CSXT-13. Applicants and NS were therefore on notice in July 2022 that CSXT intended to make the documents a part of its presentation. Nor would the page limitation of Decision No. 22 be offended in any material sense because the documents are not additional argument, but evidence that had been referenced.

Respectfully Submitted,
/S/ Paul A. Cunningham

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Dated: October 21, 2022

CERTIFICATE OF SERVICE

I certify that I have caused the foregoing to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Thomas McCarthy, and all parties of record in this proceeding.

/s/ Paul A. Cunningham

Dated: October 21, 2022