

LAW OFFICE OF DAVID L. MEYER
WWW.MEYERLAWDC.COM

1105 S STREET, N.W.
WASHINGTON, D.C. 20009
202-294-1399

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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:

I write on behalf of Applicants in response to Metra's filing of October 28 (METR-17). Metra has abused the Board's processes in this case repeatedly. The Board's procedural schedule entitled Metra to five submissions of evidence or argument: comments, amended comments, reply comments, hearing participation, and a final brief. Metra doubled its allowed total, making – or seeking to make – *ten submissions* (not counting simple errata sheets).¹ Several have already been rejected by the Board,² and Metra's effort to resubmit as hearing

¹ In addition to Metra's Comments, Amended Comments, Reply Comments, Hearing Exhibits, and Final Brief, Metra submitted five sets of additional submissions of argument or evidence prior to the close of the record, which were accompanied by a total of *seven additional verified statements*: (1) a set of so-called "Supplemental Comments" (METR-8, filed June 9, 2022), attaching a Crowley/Mulholland "Supplemental" V.S.; (2) a "Correction and Supplemental Statement" (METR-9, filed July 8, 2022), attaching a further "Second Supplemental" Crowley/Mulholland V.S.; (3) a "Motion to Amend the Procedural Schedule and for Leave to File Reply" (METR-11, filed July 21, 2022); (4) a "Motion for Leave to File Reply" along with an accompanying "Reply to Applicants' July 13, 2022 Rebuttal" (METR-12 and -13, filed August 1, 2022), attaching four further "Supplemental" and "Sur-Reply" verified statements, including another from witnesses Crowley/Mulholland; and (5) a "Motion to Strike" directed at Applicants' Rebuttal (METR-14, filed Sept. 8, 2022), attaching yet another Crowley/Mulholland V.S., this one labeled a "Rebuttal" V.S.

² See Decision No. 28 (served Sept. 27, 2022); Decision No. 33 (served Oct. 18, 2022).

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testimony the same content Metra was previously told it could not submit remains subject to a motion to strike.

Now, Metra has chosen to arrogate to itself an *eleventh round of argument*, in the form of a “reply” to Applicants’ brief. It has done this without seeking leave, and notwithstanding that no party – including Applicants, despite their right to have the last word – was given the right to file reply briefs.

Applicants will refrain from responding substantively to Metra’s further abuse. The validity of Applicants’ position, and their Final Brief, should be judged against the record as it existed when the record closed on October 21, 2022. Nor will Applicants flout the Board’s procedural schedule by attempting to submit their own list of factual misstatements contained in Metra’s Final Brief.

Instead, Applicants write only to note that the Board’s evidentiary record properly closed on October 21 with the filing of Final Briefs.

Please contact me with any questions.

Respectfully submitted,



David L. Meyer

*Attorney for Canadian Pacific
Railway Limited*

cc: All Parties of Record