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February 27, 2023

VIA EMAIL

Ms. Danielle Gosselin
Director, Office of Environmental Analysis
Surface Transportation Board
395 E Street, N.W.
Washington, D.C. 20423

RE: STB Finance Docket No. 36500, *Canadian Pacific Ry., et al. – Control*
– *Kansas City Southern, et al.*

Dear Ms. Gosselin:

The Final Environmental Impact Statement (FEIS) issued in the captioned proceeding on January 27, 2023 included in Volume 1, at pages S-6 and S-7, a discussion of several “additional voluntary mitigation measures” proposed by the Applicants that are purportedly specific to the communities making up the Coalition to Stop CPKC. The FEIS did not mention that these additional measures were submitted to OEA by Applicants’ counsel well after the close of the comment period on the Draft Environmental Impact Statement (DEIS), the closing of evidentiary submissions on the merits of the proposed merger, and the deadline for final briefs. Specifically, after learning about these new measures in the FEIS, the Coalition discovered that they had been included in two letters the Applicants’ counsel submitted to OEA on November 8, 2022 and January 12, 2023, respectively.

Neither of these letters were served on or otherwise provided to any member of the Coalition or its undersigned counsel by the Applicants. Nor did Applicants - or OEA for that matter - otherwise inform the Coalition, its representatives, or other stakeholders participating in the EIS process that these additional measures had been belatedly proposed and solicit any input or feedback on them. Notwithstanding these facts, in the FEIS OEA announced it had decided to recommend “that the Board impose these measures” without modification. See FEIS Volume 1, 4-17 and 4-18.

The purpose of this letter is to seek clarification from OEA and the Applicants of the meaning and intent of these proposed measures, as follows:

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- *“Subject to necessary Federal Railroad Administration approvals and practicability, CPKC will fund efforts towards the creation and implementation of quiet zones, including the costs of installation.”*

How do the Applicants and OEA define “practicability” and when the creation and establishment of a quiet zone would, or would not be, “practical”? How would a dispute over practicability be decided, and who would decide it? What is the extent of the Applicants’ commitment to fund efforts towards the creation and implementation of a quiet zone? Does the Applicants’ commitment to fund “efforts towards” the creation and implementation of a quiet zone include funding all efforts required to achieve the goal? How will disputes over what “efforts” are to be funded be decided? Does this condition commit Applicants to funding the total costs of installation of safety measures associated with a quiet zone?

- *CPKC will install and fund a predictive mobility system, interconnected with existing railroad crossing signals, that will deliver advanced notice of blocked crossings to citizens, police, fire, and rescue operations, and others.”*

As written, this appears to commit CPKC to pay the total cost of a predictive mobility system, but OEA should confirm that this is its intent. Will CPKC be required to fund any equipment or technology necessary for emergency first responders to access this information from their stations and vehicles? Also, OEA should clarify the level of input local communities would have on the selection of the appropriate system.

- *CPKC will install and fund ITS Interconnect for Advanced Warning Signs at strategic locations to give drivers information about occupied crossings, allowing them to make better on-the-spot decisions”*

Similarly, as written, this appears to commit CPKC to pay the total cost of this mitigation measure, but OEA should confirm that this is its intent. Will CPKC be required to fund any equipment or technology necessary for emergency first responders to access this data from their stations and vehicles? Also, OEA should clarify the level of input local communities would have on selection of the appropriate system.

- *“CPKC will install and fund Positive Train Control wireless technology tie-ins at crossings adjacent to Metra platforms, which will minimize the activation of crossing lights and gates.”*

Similarly, as written, this commits CPKC to pay the total cost of this mitigation measure, but OEA should confirm that this is its intent.

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- *With respect to the work described above, the Applicants anticipate that the Applicants or their subcontractors will perform the work. In the case of instances where work may be performed by others, the Applicants would reimburse reasonable and customary charges for such work. Because Metra owns the trackage that CP uses in these communities, Metra would have to approve the implementation of this mitigation measure¹. The Applicants would work with Metra, the communities, and any other relevant agencies to seek approval for this mitigation measure.”*

OEA and the Applicants should elaborate on the phrase “where work may be performed by others” since it seems to indicate that some work may be performed by parties who are not “Applicants or their subcontractors.” What are examples of such third parties, and how would such third parties be selected? Who would determine the scope of their work, and whether their charges were “reasonable and customary?” How would disputes over selection, qualifications and the reasonableness of charges be resolved, and who or what would resolve them? What role in all of this (meaning all measures in VM-Community-03) would the Coalition communities play?

As for Metra, to what extent have the Applicants or OEA investigated or determined that any of what Applicants have stated in these mitigation measures is feasible or technologically compatible with Metra’s current systems and operations? What if all or some of them are not, or Metra believes there are alternatives to accomplishing the desired outcome? How will such issues and/or disputes be resolved, and by who, or what?

Your prompt attention to these questions would be appreciated. A copy of this letter is also being supplied to counsel for the Applicants for their additional consideration and response.

Please don’t hesitate to call if you have any questions.

Respectfully submitted,



Attorney for the Coalition to Stop CPKC

Cc: Mr. Joshua Wayland
David L. Meyer, Esquire
Kathryn K. Floyd, Esquire

¹ It’s clear from the FEIS that the term “this mitigation measure” refers to each of the measures included in “VM-Community-03”