

February 27, 2023

Kathryn K. Floyd

T 202.344.4696
KKFloyd@Venable.com

Danielle Gosselin
Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Docket No. FD 36500

Dear Ms. Gosselin:

On behalf of Applicants, I am writing this letter to respond to the Letter of February 27 from Thomas W. Wilcox on behalf of the “Coalition to Stop CPKC” addressing commitments made by Applicants regarding environmental mitigation in Chicago-area communities as set forth at FEIS Volume 1, pages S-16 and S-17 & 4-17 and 4-18.

At the outset, CP is committed to working with the Coalition Communities and Applicants reiterate their commitment to engage in dialogue with the Coalition about how Applicants anticipate implementing the commitments they have made.

Nonetheless, Applicants wish to respond to the misimpression they may have created by the content of Mr. Wilcox’s letter. The thrust of Mr. Wilcox’s letter appears to be that the Coalition was unaware of these measures until they appeared in the FEIS in February. That implication is contrary to the facts.

1. The Coalition and its counsel ought to have been fully aware of the commitments reflected in Applicants’ letters to OEA of November 8, 2022 and January 12, 2023 from the public hearing in this proceeding, which the Coalition attended (see ITAS-7, Coalition Final Brief (filed Oct. 21, 2022)). Applicants laid out in detail the same commitments in their testimony on October 7, 2022, and Applicants subsequently submitted those commitments in the OEA process in response to the express request of Member Fuchs. See Hearing Transcript (Oct. 7, 2022) at 2023-27.

2. Indeed, as Mr. Clements explained at the hearing, the Coalition had previously been informed of these measures in discussions between CP and the

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Coalition. Id. at 2027-28. The precise commitments now presented as “new” by the Coalition were contained in a proposal made directly to the Coalition (and copied to Mr. Wilcox) on September 26, 2022. See Email from Andy Cummings (CP) to Coalition members (Sept. 26, 2022) (highlighting commitments), attached as Exhibit A hereto.

3. Contrary to the impression created by Mr. Wilcox’s letter, the Coalition’s Final Brief, filed October 21, 2022, addressed the kinds of measures covered by Applicants’ supposedly “new” commitments, urging the Board to adopt mitigation measures relating to (a) freight “train tracking technology” (addressed by Applicants’ commitments relating to predictive mobility systems and ITS Interconnect); “pedestrian crossing improvements” (addressed by Applicants’ commitment to install PTC tie-ins at crossings adjacent to Metra platforms); and “quiet zones” (addressed by Applicants’ quiet zone commitment).

4. Finally, as Mr. Wilcox and the Coalition are well aware, the Board’s rules do not call for the service of materials filed in the environmental record. That is amply reflected in the Coalition’s own (quite numerous) environmental submissions and communications with OEA, which were not served on Applicants. Applicants have no doubt that, as an active and prolific participant in the environmental review process in this proceeding, the Coalition would have been monitoring the environmental correspondence docket and thus ought to have been aware of the two letters submitted by Applicants therein on November 8, 2022 and January 12, 2023.

Importantly, Applicants restate their commitment to engage in dialogue with the Coalition about how Applicants anticipate implementing the commitments they have made. Mr. Wilcox’s letter does not warrant any further action by OEA or the Board.

Please do not hesitate to contact me with any questions.

Sincerely,



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cc: Sean Cline
David Meyer
Jeffrey Songer
Glen Wilson
Joe Van Humbeck
Kayden Howard
William Mullins
Erin Glavich
Victoria Rutson
Thomas W. Wilcox

Exhibit A

From: Andy Cummings

Sent: Monday, September 26, 2022 4:20 PM

To: 'CA Ergo' <cergo@itasca.com>; Evan Summers <ESummers@bensenville.il.us>; Bielawski, Jason <JBielawski@roselle.il.us>; Jeffrey Mermuys <jmermuys@wooddale.com>; Paula Schumacher <PSchumacher@bartlett.il.gov>; Rick Kozal <KOZAL_R@cityofelgin.org>; Maller, Juliana <jmaller@hpil.org>; Brian Townsend <btownsend@schumacher.com>
mailto:PSchumacher@bartlett.il.gov

Cc: Arielle Giordano <Arielle_Giordano@cpr.ca>; Larry Lloyd <Larry_Lloyd@cpr.ca>; David@meyerlawdc.com; tom@twilcoxlaw.com

Subject: CP counter-offer to coalition

Good afternoon, Carie Anne, Evan, Jason, Jeff, Paula, Rick, Juliana, Brian,

CP responds to the coalition's "revised mitigation measures" proposal of Sept. 23 with the attached counter-offer. Please let me know if you have questions.

Best regards,

Community Investment and Settlement Agreement

This Agreement is made and entered this ____ day of September, 2022, by and between the collective of the Village of Bartlett, Village of Bensenville, City of Elgin, Village of Itasca, Village of Hanover Park, Village of Roselle, City of Wood Dale, and the Village of Schaumburg (collectively “The Coalition”) and Canadian Pacific Railway Company (CPRC), for and/or on behalf of CPRC, Dakota, Minnesota & Eastern Railroad Corporation, Delaware and Hudson Railway Company, Inc., and Soo Line Railroad Company (each and together “CP”).

WHEREAS CP is party to a proceeding before the Surface Transportation Board (STB) Docket No. FD 36500, through which it is seeking to acquire Kansas City Southern Railway (KCS) and its operating subsidiaries (CP/KCS Transaction).

AND WHEREAS this Settlement Agreement sets out terms and commitments by the parties in resolution of any objections or demands in connection with the proceedings in Docket No. FD 36500.

AND WHEREAS all of the communities within The Coalition must participate and sign this agreement for this Settlement Agreement to be valid.

IN CONSIDERATION of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally binding, the parties agree as follows:

1. **Community Investment.** As a voluntary community investment to The Coalition, CP agrees to the following infrastructure commitments (“Community Investment”). For greater clarity, CP will hire or perform the work necessary to complete these projects and no transfer of money between CP and The Coalition will occur as part of this portion of the Community Investment. The Coalition will work with CP to support and facilitate CP’s implementation of said Community Investment, including providing appropriate documentation such as required written consent to or authorization for CP to implement on behalf of The Coalition the Community Investment. All projects are subject to necessary approvals, including METRA approvals.
 - a) Subject to the necessary approvals and practicability, the creation of a Federal Railroad Administration-approved quiet zone in each community.
 - b) Installation of a predictive mobility system that is interconnected with the existing railroad crossing signals. Predictive mobility is a service that delivers advanced notification of blocked railroad crossings to citizens, logistics companies, transit companies, public safety, and/or fire/rescue and will assist in minimizing rail crossing friction points for EMS response.
 - c) Installation of ITS Interconnect for Advanced Warning Signs at strategic locations. Advanced Warning Signs deployed with message signs to display important information about occupied crossings so vehicle drivers and pedestrians can make better decisions on the spot.
 - d) Installation of Positive Train Control (PTC) wireless technology tie-ins at crossings immediately adjacent to Metra platforms. With PTC wireless technology, activation of the crossing lights and gates is minimized, and ability for clear crossings is enhanced.
2. **Community Commitment.** In exchange for this Community Investment, The Coalition agrees that it will not seek any mitigation conditions before the STB as part of the proceedings in Docket No. FD 36500. The Coalition further agrees that it will not oppose CP’s acquisition of KCS before the STB in Docket No. FD 36500 or in any other forum.

3. **Final Surface Transportation Board Approval.** CP's commitments under this Settlement Agreement will not take effect unless and until the STB gives final approval to CP's acquisition of KCS in Docket No. FD 36500 and CP in fact acquires control of KCS pursuant to that approval.
4. **Sole Remedy.** CP and The Coalition intend that the Surface Transportation Board require compliance with this Settlement Agreement instead of any other mitigation that might be imposed within The Coalition as part of the CP/KCS Transaction.
5. **Governing Law.** This Settlement Agreement is governed by, and construed in accordance with, the laws of the state of Minnesota and applicable federal laws, excluding any conflict of laws rules that may apply therein.
6. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement of the parties concerning its subject matter and no other proposals, representations, warranties or other documents or agreements, either oral or written, shall be binding upon the parties. Notwithstanding the foregoing, the parties shall undertake to execute any agreement and take all other actions necessary to give effect to this Settlement Agreement. No provision of this Settlement Agreement may be amended, modified, waived or changed unless made in writing and signed by the Parties.
7. **Termination.** If any party to the Coalition withdraws from or terminates their participation in this Settlement Agreement, this Settlement Agreement is terminated immediately, and is of no further force and effect. Notwithstanding any provision of this agreement to the contrary, CP will not have any further obligations with respect to the Community Investment upon such termination.

[Execution Page to Follow]

8. **Counterparts.** The parties may execute this Agreement by facsimile or other electronic means and in separate counterparts each of which when so executed and delivered shall be an original, and all such counterparts taken together shall constitute one instrument.
9. **All Parties to Sign.** This agreement will take effect only when signed by all the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above, by their respective duly authorized representatives.

CITY OF ELGIN

By: _____
(signature)
Name: _____
(print name)
Title: _____
(print title)

CANADIAN PACIFIC RAILWAY COMPANY

By: _____
(signature)
Name: _____
(print name)
Title: _____
(print title)

VILLAGE OF BARTLETT

By: _____
(signature)
Name: _____
(print name)
Title: _____
(print title)

VILLAGE OF BENSENVILLE

By: _____
(signature)
Name: _____
(print name)
Title: _____
(print title)

VILLAGE OF ITASCA

By: _____
(signature)
Name: _____
(print name)
Title: _____
(print title)

VILLAGE OF HANOVER PARK

By: _____
(signature)
Name: _____
(print name)
Title: _____
(print title) (print title)

VILLAGE OF ROSELLE

By: _____
(signature)
Name: _____
(print name)
Title: _____
(print title)

CITY OF WOOD DALE

By: _____
(signature)
Name: _____
(print name)
Title: _____
(print title)

VILLAGE OF SCHAUMBURG

By: _____
(signature)
Name: _____
(print name)
Title: _____
(print title)