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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
April 6, 2023
Part of
Public Record

Finance Docket No. 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY
COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAIN & 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

REPLY TO METRA’S REQUEST FOR CLARIFICATION

The Coalition to Stop CPKC (“Coalition”)¹ hereby submits this Reply to the letter request of the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (“Metra”) filed on April 4, 2023 (“Metra Request”) asking the Surface Transportation Board (“STB” or “Board”) to clarify certain aspects of the Decision served in this proceeding on March 15, 2023 and to request that the Board make certain modifications to the oversight conditions imposed in that Decision. This Reply is limited to expressing the Coalition’s support for Metra’s request that

¹ Village of Itasca, Illinois, Village of Bensenville, Illinois, City of Wood Dale, Illinois, Village of Roselle, Illinois, Village of Schaumburg, Illinois, Village of Hanover Park Illinois, Village of Bartlett, Illinois, City of Elgin, Illinois, and DuPage County, Illinois.

the Board provide interested parties with confirmation and clarification of the reporting requirements adopted by the Board and imposed on the merged CPKC.²

Specifically, a material feature of the Decision is the Board's adoption of a seven-year oversight period by which the Board will, and interested parties may, monitor the implementation of the merger. The Coalition disagrees with many aspects of the Decision and the Board's overall conclusion that the merger will not result in significant harm to the Coalition communities, and the Coalition is reserving all its rights to challenge the Decision. However, the Coalition, like Metra, appreciates the Board's decision to closely monitor the implementation of the merger and the public statements of Chairman Oberman that the Board will be prepared to modify the particulars of the Decision post-merger if circumstances warrant it. The Coalition intends to actively participate in the oversight process.

A critical underpinning of the oversight process as described in the Decision is the extensive reporting that CPKC must provide to the Board on a variety of service and operational matters.³ At this time, the Coalition does not take issue with the reporting requirements relating to the Coalition's interests and concerns. However, while the Applicants in their Final Brief,⁴ and the Board in the Decision, both infer that all reports from CPKC will be filed with the Board and therefore available to interested parties (presumably subject to the Protective Order in this

² Metra Request at 2, numbered paragraph 1.

³ CPKC must also submit quarterly reports to Office of Environmental Analysis ("OEA") on the implementation of the Mitigation Measures imposed by the Board as a result of OEA's analysis of the potential environmental impacts of the merger. These quarterly reports to OEA are not the subject of this Reply because the Coalition has been informed by OEA that those reports will be publicly available to interested parties via the Board's website.

⁴ See Applicants' Final Brief at 8-9, 12, Rider 1 page A6, Appendix A at A2, A4, and Attachment 1.1.

proceeding), the Decision does not expressly state that this is the case or elaborate on the Board's intentions.⁵

The Coalition therefore concurs with Metra that the Board should confirm and clarify its intentions concerning the reporting requirements it has imposed on CPKC, specifically that the reports on operational and service metrics CPKC has been directed to submit will be made available to the Coalition and other parties who intend to actively participate in the oversight process, whether that availability is accomplished through filing the reports in the docket of this proceeding or by another means.⁶

Respectfully submitted,



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⁵ See, e.g., Decision at 5 (emphasis added) (Reports concerning preservation of gateways will “enable *the Board* to closely monitor whether Applicants are in fact preserving efficient interline options for shippers at affected gateways, thus protecting competition,” but not specifically mentioning the public or stakeholders); *Id.* at 81 (discussing general reporting requirements, and that “Applicants will be required to provide a monthly report” without further details about public accessibility); *Id.* at 83 (stating the Board may require CPKC to submit 100% of its traffic tapes to the Board, and that the Board “will take appropriate measures to safeguard the confidentiality of proprietary or otherwise sensitive information contained in those tapes” but not also explaining how stakeholders would have access to the tapes.); *Id.* at 91; and Appendix B (which says the applicants will “provide monthly reports” to the Board, and “will report,” but does not expressly state these reports will be filed in the docket or provide other information about the mechanics of the reporting or stakeholder access).

⁶ For example, the Board could consider following the template it created with service data submitted by Class I railroads pursuant to EP No. 770 (Sub No.1), *Urgent Issues in Freight Rail Service – Railroad Reporting* and EP No. 724 (Sub No. 5), *Petition for Rulemaking to Amend 49 C.F.R. 1250*, and create a separate portal on the Board's website to collect and house the data submitted by CPKC pursuant to the Decision.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of April, 2023 a copy of the foregoing Reply to Metra Request for Clarification was served on each Party of Record listed on the official Service List for this proceeding.

/ss/ Thomas W. Wilcox