

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

ENTERED
Office of Proceedings
April 24, 2023
Part of
Public Record

CANADIAN PACIFIC RAILWAY LIMITED, ET AL. – CONTROL – KANSAS CITY SOUTHERN, ET AL.

**APPLICANTS' REPLY TO CSXT'S PETITION TO CLARIFY
OR, IN THE ALTERNATIVE, FOR RECONSIDERATION**

Applicants reply as follows to the “Petition to Clarify or, in the Alternative, for Reconsideration” filed by CSX Transportation, Inc. (“CSXT”) on April 4, 2023 (CSXT-18).¹

CSXT’s Petition makes clear that it *does not* seek reconsideration of the Board’s decision rejecting the relief that CSXT sought in this proceeding. *See* CSXT-18 at 4 & n.8; *see also* Decision No. 35 at 135-36 (rejecting all relief sought by CSXT). Instead, as CSXT explains, its Petition is narrowly focused on one issue: whether the Board misstated a minor factual point when it said (*id.* at 135) that there is currently no interchange between CSXT and KCS at Meridian, MS. CSXT acknowledges that the Board’s statement was accurate as to certain traffic, but CSXT suggests that it was an overstatement because CSXT claims to possess haulage rights over the Meridian & Bigbee Railroad (“MNBR”) that could allow CSXT to interchange railcars with KCS at Meridian. CSXT-18 at 2, 3.

¹ On April 14, 2023, the Voting Trustee transferred to Canadian Pacific the shares of Kansas City Southern held in Trust, and the Voting Trust was extinguished by its terms. *See* Letter from Trustee Ronald L. Batory to Board (filed April 14, 2023). Canadian Pacific thereby exercised control of The Kansas City Southern Railway (“KCSR”), and Canadian Pacific Railway Limited has formally changed its name to Canadian Pacific Kansas City Limited (“CPKC”). Although KCSR has retained its existence as a separate carrier, this pleading is being submitted by counsel for CPKC on behalf of CPKC’s entire corporate family, and the “Applicants” will henceforth be referred to as CPKC unless reference to a specific entity is warranted.

The clarification (or reconsideration) requested by CSXT is unwarranted. The Board's factual statement was correct based on the record in this proceeding, and in any event the clarification CSXT seeks would be without substantive consequence.

1. The Board correctly observed that CSXT is not currently interchanging cars with KCS at Meridian. This issue was addressed squarely by two of Applicants' rebuttal witnesses: Patrick J. Ottensmeyer and Stephen D. Simmons, both of whom confirmed that there is no interchange between KCS and CSXT at Meridian *for any traffic*.²

The evidence that CSXT points to in its Petition is not to the contrary. It establishes only that CSXT may have entered a new agreement in 2022 reinstating haulage rights over MNBR enabling CSXT to reach Meridian from Montgomery, AL. *See* CSXT-18 at 2.³ But this record does not support the existence of any actual interchange between CSXT and KCS at Meridian. *See* CSXT-13, Girardot R.V.S. at 6 (no reference to actual interchange).

KCS has reviewed its records and can confirm that Meridian is not an established interchange between KCS and CSXT and there has in fact been no interchange of railcars with CSXT at Meridian during 2022 or 2023, suggesting that whatever haulage rights CSXT may possess have never been exercised.⁴ By contrast, KCS has interchanged cars with CSXT at Montgomery, using KCS's own haulage rights over MNBR between Meridian and Montgomery

² Applicants' Response to Comments (CP-53/KCS-39), Ottensmeyer R.V.S. at ¶ 25 (at pages II-26 to -27); Simmons R.V.S. at ¶ 87 (at page II-816).

³ CSXT cites evidence submitted with CSXT's Response to Comments in July 2022 (CSXT-13), including the Reply Verified Statement of Robert Girardot and a highly confidential document purportedly produced by CSXT in discovery. *See* CSXT-13 at 17 n.43. KCS personnel are unaware of the existence of any such CSXT haulage rights.

⁴ Factual statements herein regarding interchange between KCS and CSXT are verified by Stephen D. Simmons.

about which Mr. Ottensmeyer and Mr. Simmons testified.⁵ Accordingly, the Board's statement that there is no present interchange between CSXT and KCS at Meridian was correct, and no clarification is warranted.

2. CSXT's position is also inconsequential. As Applicants made very clear in their response to CSXT's Comments, CPKC recognizes that it is not prohibited from interchanging certain traffic with CSXT at Meridian – were CSXT to acquire (or already possess) rights permitting it to reach Meridian – and CPKC has every incentive to do so. *See Applicants' Response to Comments (CP-53/KCS-39) at 265, 267 (at pages I-280 and I-282).* Nothing the Board said in Decision No. 35 would stand in the way of CPKC and CSXT establishing efficient interchange of traffic at Meridian, MS.

CONCLUSION

For the foregoing reasons, the Board should deny CSXT's Petition.

⁵ *See CP-53/KCS-39, Ottensmeyer R.V.S. at ¶ 25 (at pages II-26 to -27); Simmons R.V.S. at ¶ 87 (at page II-816).*

Respectfully submitted,



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April 24, 2023

VERIFICATION

I, Stephen D. Simmons, declare under penalty of perjury under the laws of the United States of America that the foregoing statements regarding the interchange of railcars between CSXT and KCS at Meridian, MS and Montgomery, AL are true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed this _20_ day of April, 2023.

DocuSigned by:

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Stephen D. Simmons

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Applicants' Reply to CSXT's Petition to Clarify or, in the Alternative, for Reconsideration to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sonia Gupta

Sonia Gupta

April 24, 2023