

BEFORE THE SURFACE TRANSPORTATION BOARD

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

**APPLICANTS' REPLY TO METRA'S APRIL 4 LETTER AND
COALITION TO STOP CPKC'S APRIL 6 REPLY**

Applicants¹ reply as follows to the letter filed by Metra on April 4 requesting “clarification of, and certain modifications to, the oversight conditions the Board imposed in its March 15, 2023 Decision” (the “Metra Petition”) and the purported “Reply” to that Petition filed by the Coalition to Stop CPKC on April 6.²

Only two aspects of the Metra Petition constitute bona fide requests that the Board explain what it ordered in its March 15 Decision: namely, (a) the degree to which the data reported to the Board by CPKC will be shared with third parties like Metra, and (b) whether

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 Company (“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.

² CPKC also responds in part to the pleading filed by BNSF on April 19, which was styled a “reply in support of Metra” (“BNSF-18”), to the extent that document addresses relief requested by Metra. The majority of BNSF-18, however, requests affirmative relief relating to the Board’s “gateway conditions,” which Metra did not address at all in its Petition. As such, and if the Board does not reject BNSF’s relief out of hand as a procedurally improper, late-filed petition for reconsideration (*see* note 3, *infra*), CPKC will address BNSF’s points in a separate reply, which will be filed by May 9, 2023 (or within 20 days of April 19, per 49 C.F.R. 1104.13(a)).

Metra may participate in the Technical Conference between CPKC and Board Staff. We address those two questions in Section I below.

The remainder of the Metra Petition does not seek any clarification at all. Instead, it asks – for the first time in this proceeding – that the Board order CPKC to provide Metra with extensive detailed data reporting *that goes far beyond* what Decision No. 35 ordered CPKC to report to the Board. Notwithstanding Metra’s sophistry about its “requests ... not requir[ing] reconsideration” (*see* Metra Petition at 1), they amount to precisely that: seeking to expand the conditions imposed by the March 15 Decision. As we explain in Section II below, Metra has not even attempted to meet the Board’s well-established standards for reconsidering the conditions imposed in Decision No. 35, and there is no valid justification for the new relief Metra seeks.

I. METRA’S TWO REQUESTS TO CLARIFY CERTAIN DATA REPORTING ISSUES ADDRESSED IN DECISION NO. 35

A. Metra’s Request that Certain Interested Parties Be Provided the “Operational Metrics and Data” that CPKC Must Report to the Board

Metra asks the Board to clarify that CPKC must provide (or make available) to Metra certain of the “operational metrics and data” that Decision No. 35 requires CPKC to report the Board regarding CPKC’s Chicago-area operations. Metra Petition at 2. The Coalition’s Reply supports Metra’s position on this issue.³ BNSF likewise supports Metra’s request, but goes well beyond it to demand access for itself and all other interested parties to all of the reporting required by Appendix B of Decision No. 35. BNSF-18 at 2.

³ To the extent the Coalition’s April 6 Reply is construed as affirmatively seeking any relief on behalf of the Coalition, it would be procedurally improper and should be denied because the Coalition failed to file a timely petition of its own. *See UP/SP*, 4 S.T.B. 303, 308 (1999) (rejecting NITL “request for affirmative relief” because such a request “should not be presented in the form of a reply to a petition”).

Metra’s request is a narrow one seeking access for it and certain other interested parties to the “Metra & Chicago Communities” metrics and operational data that the Board has required CPKC to report on a monthly basis. *See* Decision No. 35 at 119-20 & App. B, p. 199. CPKC does not object to providing such data to Metra, so long as the data so provided would be protected from inappropriate use or disclosure by the terms of a Board-imposed protective order. The operational metrics at issue here – including detailed information on the volume of CPKC freight traffic and CPKC train length and transit times – will disclose commercially and competitively sensitive information that should not generally be available to CPKC’s rivals or the public.⁴ The Board’s discharge of its role in monitoring the implementation and impacts of the CP/KCS Transaction need not, and should not, place CPKC at a competitive disadvantage relative to its larger competitors, none of which will be subject to any reciprocal obligation to disclose data about their operations to CPKC.

The fact that BNSF has sought access to the detailed reporting required by Appendix B highlights the danger here. BNSF is a competitor of CPKC, and it has no valid interest in poring over CPKC operational details, especially as they relate to Chicago-area trackage over which BNSF does not operate. Even more acute concerns are raised by BNSF’s stated desire to unleash its consultants to pore over the details of CPKC interchange data or – worse yet – CPKC’s 100 percent traffic tapes. CPKC will be addressing these broader requests for relief by BNSF in its subsequent reply to BNSF’s late-filed petition.

⁴ This has been standard practice with respect to detailed operating data, as evidenced recently by Union Pacific’s designation of train location as Highly Confidential under a protective order entered by the Board. *See* Finance Docket No. 36609, *Foster Poultry Farms – Ex Parte Petition for Emergency Service Order* (STB served June 22, 2022) (entering protective order); UP Status Report (filed July 5, 2022) (designating entirety of “tracker report” as Highly Confidential).

CPKC regards Metra as standing in a uniquely different posture with respect to these data. Much of the Chicago-related information covered by the Board's reporting condition will be regularly available to Metra in the ordinary course through Metra's own monitoring of operations on the lines it uses as well as CPKC's commitment to ongoing dialog with Metra about CPKC train volumes and operations. Accordingly, CPKC would not object to sharing these metrics with Metra so long as confidentiality protections are in place.⁵

Metra's requested relief does not require the Board to address CPKC's reporting obligations more generally, but we nonetheless outline our understanding of the Board's intentions.

First, during the proceeding Applicants committed to ongoing reporting of numerous metrics relating to the level of service provided to CPKC's customers, and the Board imposed a condition requiring weekly reporting of numerous service-related metrics. *See* Decision No. 35 at App. B, p. 197. Applicants always intended for this reporting to be for the benefit of rail customers, and accordingly CPKC intends to file these reports on the public record – either in Ex Parte Nos. 724 and 770 or directly in this docket.

Second, the remaining reporting obligations imposed on CPKC are appropriately treated as obligations *to keep the Board informed* regarding the status of the Transaction's implementation over the course of the Oversight Period. CPKC views these reporting obligations as a supplement to the role played by interested third parties in bringing to the Board's attention issues of potential concern based on their own experiences and observations. CPKC fully expects that, were issues to arise during the course of the Oversight Period (or even

⁵ CPKC also is not opposed to making this information available to counsel for the Coalition, and the Illinois Commerce Commission, provided that they execute and abide by the terms of a Board-imposed Protective Order.

beyond), parties that perceive themselves to be adversely affected by the Transaction will not hesitate to bring those matters to the Board's attention. Those parties will not need access to CPKC data in order to identify and call attention to potential issues warranting the Board's attention, because they will have their own first-hand knowledge of the supposed impacts.

This is the Board's standard practice. In *CSX/NS/Conrail*, for example, the Board rejected a request by several parties to require the public reporting of certain metrics relating operations in the Chicago Switching District. The Board explained that "the purpose of [its] monitoring condition [was] to generate information that will allow [the Board] to evaluate and respond to problems arising during implementation of this transaction, not to make all of the reporting information publicly available." *CSX/NS/Conrail*, Finance Docket No. 33388 (STB Decision No. 96, served Oct. 19, 1998) at 17. The Board noted that the railroad seeking access to these data "as with any other carrier or shipper ... , can recognize service deficiencies based on its own experience, and without any need for reporting, and it can always inform us of any problem of service failures." *Id.* Accordingly, the Board required only fields that were not "commercially sensitive" to be filed publicly.

Similarly, in the *KCS/Tex Mex/TFM* proceeding, the Board provided for monitoring of operations at the Laredo gateway (much as it has done here), and made clear that this would be undertaken by the Board's Office of Compliance and Enforcement ("OCE") staff based on data shared directly with staff and not with third parties. 7 S.T.B. 933, 952 (2004).

Here, the vast majority of the data the Board has required CPKC to report will be commercially and competitively sensitive, while at the same time also being unnecessary in order for third parties to monitor impacts of the Transaction that may affect them. In the case of operational data, other railroads who share lines with CPKC will be fully aware of any issues

posed by Transaction-related traffic increases. The sharing of competitively sensitive data regarding CPKC's operations over those lines is better handled through the mutual operational dialogs established by extant trackage rights arrangements rather than a one-way street of CPKC reporting to other railroads.

Similarly, were any concern to arise about CPKC's compliance with the Board's "open gateway" conditions, shippers (as well as other railroads) will have ample information about circumstances actually affecting them (including via the "written justifications" the Board has required CPKC to provide shippers in certain cases) so as to enable them to bring bona fide concerns to the Board's attention.

Particularly given the competitive sensitivity of detailed operating and interchange data – and even more acutely in the event the Board decides to require the filing of CPKC's 100% traffic tapes⁶ – an obligation to file these data in a form that could be browsed at will by rival railroads and their consultants would inappropriately handicap CPKC's competition with other railroads and modes. The Board should not require CPKC – and CPKC alone in the industry – to provide visibility into its operations and traffic flows when other railroads are not similarly obligated.

B. Metra's Request that It Be Included in the Board-Ordered Technical Conference

Metra also asks (at 2) the Board to clarify that it may participate in the Technical Conference ordered by the Board to take place between CPKC and Board Staff regarding the

⁶ As the Board instructed, CPKC will be addressing this issue in the Technical Conference process. See Decision No 35 at 144.

“formatting and reporting procedures” (*see* Decision No. 35 at 144)⁷ relating to the Board’s data reporting conditions. Although BNSF echoes Metra’s request that third parties – presumably including itself – be permitted to participate in the Technical Conference (BNSF-18 at 2), BNSF’s focus is on participation in the *oversight process generally*, a matter not in dispute.⁸

CPKC believes that there is no ambiguity in the Board’s determination that CPKC participate “*with Board Staff*” in the Technical Conference. *Id.* at 144 & 174 (emphasis added). The participants in that Conference are to be representatives of CPKC and appropriate members of the Board’s Staff. *Id.* This is confirmed by the precedents the Board cited in Decision No. 35 (at 144 n.215) for the envisioned Technical Conference. In *KCS/Tex Mex/TFM*, the Board instructed OCE to monitor KCS’s operations at the Laredo gateway and stated that the “Director will, *after conferring with KCS*, establish the format of this reporting.” 7 S.T.B. at 933 (emphasis added). There was no involvement by third parties. Likewise, in *CSX/Pan Am*, the Board instructed CSX to “meet *with Board personnel* to establish appropriate measures, methodologies, and reporting procedures for” the Board’s monitoring. Finance Docket No. 36472 (Decision No. 9, served Apr. 14, 2022) at 50 (emphasis added). Again, there was no third-party involvement.⁹

⁷ *See also, e.g., id.* at 120 (“In connection with the technical conference, guidance will be developed regarding the Board’s requirements for both recordkeeping and reporting of any data, including scope, methodology and formatting.”).

⁸ There is no doubt that BNSF and other third parties will be permitted to file appropriate comments during the oversight process regarding the implementation of the CP/KCS Transaction, within the limitations established by Decision No. 35. *E.g.*, Decision No. 35 at 73 (“With one important exception, however, the Board will decline here to impose limitations on who may seek Board action related to Applicants’ open gateway obligations, and will instead decide that issue on a case-by-case basis.”).

⁹ BNSF’s citations regarding third-party participation (BNSF-18 at 2) all relate to the general process of soliciting comments from third parties during the oversight process.

Wholly apart from what the Board had in mind when it issued Decision No. 35, participation by Metra – which as BNSF’s submission shows would inevitably invite participation by numerous other participants in this docket – would be a bad idea. Metra will come to the Conference with its own agenda, including a bias toward expanding CPKC’s reporting obligations (as evidenced most clearly by Metra’s Petition). CPKC is concerned that participation by Metra representatives would get in the way of an open and productive give-and-take with Board Staff about the details associated with the reporting that the Board has ordered,¹⁰ and those concerns would be magnified exponentially were other third parties to seize upon the opportunity to participate alongside Metra.

CPKC wishes to underscore, however, that it is not seeking to preclude Metra (or any other party) from expressing its views about the data reporting process. First, as the Board has explained, it will memorialize the specifics of CPKC’s reporting obligations in a subsequent order (the “Reporting Order”). Decision No. 35 at 144. Metra (along with other third parties) will have ample opportunity to review that order and point out ways in which they think that the data reporting formats or procedures ordered by the Board might be improved.

Second, if Board Staff believes that it would be useful to receive Metra’s views on specific details concerning the reporting of data germane to Metra’s operations prior to the Board issuing its Reporting Order, there are a variety of approaches that could allow Metra to comment without burdening the interactions between CPKC and Board Staff. For example, Board Staff could schedule a session attended by representatives of both CPKC and Metra to solicit Metra’s input on whatever details Staff might develop through the Technical Conference process

¹⁰ Among other things, Metra certainly has no proper role in discussions of the numerous data reporting elements that are unrelated to Chicago-area operations (just as BNSF has no proper role in discussion of the numerous data reporting elements unrelated to operations over lines BNSF uses).

regarding data reporting related to Chicago-area operations. Metra, of course, would not be free in that forum to urge reporting obligations beyond those imposed in Appendix B of Decision No. 35, but Metra could comment on how Board Staff was proposing to implement the specific Metra-related metrics required by Decision No. 35.

II. METRA’S REQUESTS FOR ADDITIONAL DATA-REPORTING CONDITIONS SHOULD BE REJECTED

The remainder of the Metra Petition seeks relief that the Board did not order, and that Metra never sought in this proceeding. Accordingly, that relief constitutes an entirely unsupported petition to reconsider Decision No. 35, and it should be summarily denied.

First, Metra’s reference (at 1) to its desire for “certain modifications” to the conditions imposed in Decision No. 35 acknowledges that its requests to impose additional data reporting obligations on CPKC is not really just a desire for “clarification.” Board precedent establishes that “clarifications” are limited to *further explanation* of actions that the agency has already taken. *See, e.g., CSX/NS/Conrail* (Decision No. 96 served Oct. 19, 1998) at 7-8 (“A prior decision may be clarified in any instance in which there appears to be a need for a more complete explanation of the action taken therein. A decision clarifying a prior decision is, in many respects, the functional equivalent of a declaratory order.”); *St. Louis Southwestern Ry. – Trackage Rights over Missouri Pacific R.R. – Kansas City to St. Louis*, 8 I.C.C.2d 80, 98 (1991) (providing clarification on “specific issues” regarding the “application of” a “basic formula” that had “been *established in the prior decisions*”) (emphasis added).

Here, the scope of CPKC’s reporting obligations was decided in Decision No. 35, and where an issue has been decided, there is nothing to clarify, and there is certainly no “uncertainty” warranting the institution of a declaratory order proceeding. Finance Docket No.

35825, 212 Marin Boulevard, LLC, et al. – Petition for Declaratory Order (STB served Aug. 11, 2014).

Second, Metra has utterly failed to satisfy the standards applicable to petitions for reconsideration, which govern Metra’s effort (or that of BNSF or any other party) to modify the conditions imposed in Board’s Decision No. 35 so as to impose entirely new obligations on CPKC.

Board precedent establishes that such requests are to be assessed under the standards applicable to reconsideration petitions. *See UP/SP*, Finance Docket No. 32760 (STB Decision No. 58, served Nov. 20, 1996) (applying reconsideration standard to shipper’s request that Board “modify” terms of conditions imposed in Decision No. 44); *see also, e.g., CSX/NS/Conrail* (Decision No. 96 served Oct. 19, 1998) at 8 (“Where appropriate, we have treated petitions for clarification as petitions for reconsideration.”).

Metra, however, does not attempt to meet the standards for reconsideration. A petition to reconsider a prior decision of the Board “will be granted only upon a showing [that] ... “[t]he prior action will be affected materially because of new evidence or changed circumstances [or] ... [t]he prior action involves material error.” 49 C.F.R. § 1115.3(b) (“A proceeding may be reopened, and reconsideration granted, upon a showing of material error, new evidence, or substantially changed circumstances.”); *UP/SP*, Finance Docket No. 32760 (STB Decision No. 62, served Nov. 27, 1996) at 3 (denying petition for reconsideration).

Metra does not contend that there is any “new evidence or changed circumstances,” nor could it. Nothing of relevance has transpired since the Board authorized CP to control KCS. Nor does Metra contend that the Board committed “material error” when it imposed the reporting obligations set forth in Appendix B and rejected (as “unnecessary,” *see* Decision No. 35 at 143

n.214). Metra’s lack of argument on the question of “material error” is not surprising given that Metra never before sought the data it now urges the Board to require.

Because Metra expressly denies that it is seeking reconsideration and does not purport to address the standards for doing so, the Board should deny Metra’s requested relief without further consideration. Metra is simply wrong in suggesting (at 1) that it can sidestep the need to satisfy those standards simply by arguing that imposing additional conditions on CPKC might “further the oversight objectives of the Board’s Decision.” This notion is contrary to Board precedent, which establishes that any efforts (now or in the future) to impose additional conditions on the Transaction during the oversight process would require a party to satisfy the standards for reopening,¹¹ including by demonstrating a causal nexus between the Transaction and some cognizable harm. *See, e.g., UP/SP*, Finance Docket No. 32760 (STB Decision No. 77, served Jan. 7, 1998) (denying imposition of new condition absent showing of competitive harm meeting standards for reopening); *CN/IC*, Finance Docket No. 33556 (STB Decision No. 39, served Aug. 27, 2002) at 6 (denying modification to conditions imposed in *CN/IC*).

Third, the additional reporting sought by Metra would also be bad policy. None of it is necessary in order for the Board and its Staff – aided by Metra’s input based on its own experiences – to monitor potential impacts of the CP/KCS Transaction on Metra’s operations. Indeed, much of the requested data is not at all germane to the goal of monitoring such impacts. And all of it would impose unnecessary burdens on CPKC, potentially leading to the disclosure of competitively sensitive information that would handicap CPKC via-a-vis its competitors.

¹¹ The standards for reopening are no less stringent than the standards for granting petitions for reconsideration: “Under 49 U.S.C. § 1322(c) and 49 C.F.R. § 1115.4, the Board may reopen a proceeding because of ‘material error, new evidence, or substantially changed circumstances.’ The alleged grounds ‘must be sufficient to lead the Board to materially alter its prior decision.’” *Canadian National Ry. & Grand Trunk Corp. – Control – EJ&E West Co.*, Finance Docket No. 35087 (Sub-No. 8) (STB served Aug. 30, 2019) at 4 (quoting *Village of Barrington v. S.T.B.*, 892 F.3d 252, 267 (7th Cir. 2018)).

The Board has rejected onerous reporting requirements in merger cases where the third parties (like Metra) that might be impacted by the transaction would be aware of those impacts from their own first-hand experience and would be well positioned to report those issues to the Board's attention. In *CSX/NS/Conrail*, for example, the Board rejected requests by certain parties for access to detailed reporting of certain operating metrics, reasoning that such information is competitively sensitive and those parties could “recognize service deficiencies based on its own experience, and without the need for any reporting, and [can] always inform us of any problems or service failures.” Finance Docket No. 33388 (STB Decision No. 96, served Oct. 19, 1998)) at 17.

Thus, even if Metra had met the threshold standards for a reconsideration petition, the Board should reach the same conclusion here as it did in the Conrail case and reject Metra's proposed relief. To the extent individual CPKC trains might end up having impacts on Metra's operations, Metra will already have ample access to information – in many cases better information than CPKC will have – about those trains and their effects on Metra's operations.

A review of Metra's proposed data reporting obligations confirms Metra's overreach.

1. Although Metra suggests that the Board's monitoring must analyze each and every CPKC train that operates over Metra's MD-W and MD-N lines, only two of Metra's proposed new reporting obligations would provide train-by-train detail for metrics that the Board has required CPKC to report: Item 1(e), which would require train-by-train reporting of train length, and Item 1(h), which would require train-by-train reporting of the times when CPKC trains enter and exit Metra trackage.¹²

¹² This is contrary to Metra's (incorrect) assertion (at 3) that “[m]ost of these data are the type of train-by-train data that is readily available to CPKC and will likely be used to compile the weekly average data the Board requested.”

But additional detail on these topics is not warranted.¹³ The Board has already required CPKC to report extensively about train lengths: weekly averages by quartile, as well as maximum length and the number of trains greater than 10,000 feet in length. No purpose would be served by reporting individually on the length of each and every train, especially where Metra will be well aware of any operational impacts that individual trains cause – either because of their length or for any other reason.

Likewise, the Board has imposed detailed reporting obligations relating to the average transit times of CPKC through trains across multiple separate segments of trackage shared with Metra. No purpose would be served by reporting individually on the specific times of entry and exit of each and every train, especially where Metra will be well aware of those trains from its own monitoring of CPKC’s dispatching in real-time, and Metra will likely know more than CPKC about any operational impacts that individual trains cause.¹⁴

2. All of Metra’s other demands ask the Board to require that CPKC provide Metra with highly detailed information – regarding each and every CPKC train that touches Metra trackage – that goes well beyond any metric that the Board has required CPKC to report. Much of this information has no plausible nexus to Metra’s claimed goal of monitoring operational impacts on its own passenger trains. And all of it would be burdensome to generate and highly commercially sensitive, such that its reporting would expose CPKC to competitive disadvantage.

¹³ CPKC understands that it will be required to retain the data underling the metrics it reports pursuant to Appendix B (*see, e.g.*, Decision No. 35 at 120), but retaining relevant databases is a far cry from compiling and reporting additional metrics drawn from those databases.

¹⁴ In addition, for the Metra lines for which CPKC dispatchers use Metra’s TMDS/Wabtec dispatching system – all of the MD-N line and much of the MD-W line – Metra would have access that is equal to or better than CPKC to train-by-train information about entry/exit points and times of CPKC freight trains, both in real time and via playback of historical records.

- Metra Individual Train Items 1(a)-(d) and 1(f)-(g) would require train-by-train reporting of metrics relating to CPKC train composition: axles, loads, empties, tonnage, count of hazardous materials cars, and locomotive consist.

None of these details regarding the composition of individual CPKC trains has anything to do with potential operational impacts on Metra. Reporting on a train-by-train basis would impose unnecessary burdens and threaten to reveal highly sensitive information about CPKC's future traffic composition and operating details. The count of hazardous materials cars is particularly misplaced, insofar as the movement of such commodities is properly evaluated within the scope of the Safety Implementation Plan and the Board-imposed environmental conditions.

- Metra Individual Train Item 1(i) would require train-by-train reporting of what Metra describes as “[n]etwork visibility from a noncontrolling dispatch system view” of operations on CPKC’s network up to 100 miles beyond Metra’s trackage.

This item appears to demand that Metra be provided with the real-time capability of monitoring CPKC's dispatching of freight trains far from Metra's own territory. As such, it is extraordinarily inappropriate and overreaching. The Board rejected Metra's requests for a forced transfer of dispatching authority with respect to *Metra's own lines*. Decision No. 35 at 117. Forcing CPKC in effect to allow Metra to station an observer alongside CPKC's dispatchers (as Metra seeks to do) to oversee the handling of CPKC lines far from Chicago would be intrusive and utterly unjustified in these circumstances.

That said, CPKC does anticipate engaging with Metra on a mutual and cooperative basis in ongoing dialog regarding the efficient joint operation of the trackage they share in the Chicago

area,¹⁵ including in appropriate circumstances the sharing of information about the flow of CPKC trains towards the Chicago-area via lines beyond the limits of Metra's territory.

- Metra Individual Train Item 2 would require train-by-train reporting of the location (by precise milepost and track number) and duration of each and every stop made by a CPKC train on Metra trackage.

This item would unnecessarily impose extraordinarily onerous reporting of operational details that would be entirely irrelevant except in those rare cases when a particular stopped CPKC train causes delays to a Metra train. But in those cases Metra will already know about its own delays and the circumstances that led to them.¹⁶

- Metra Individual Train Item 3 would require the reporting of the "Tower B17 block sheet."

This item would require CPKC to provide Metra with paper records containing train-by-train operational details for each and every movement – including Metra's own trains – through the B17 interlocking at the west end of Bensenville Yard. For the reasons discussed above, Metra does not need this information to assess impacts on its own operations of CPKC freight trains.

- Metra Individual Train Item 4 would require train-by-train reporting of what Metra describes as "Segments of Operations with Each Set of Deliveries/Removals of Cars."

It is not at all clear what Metra has in mind with this new requirement. CPKC expects that all of the through trains operated over Metra trackage will operate intact – or at least intact between Bensenville Yard and the end points of the segments for which the Board has required

¹⁵ See, e.g., Decision No 35 at 111 (CPKC will "[e]ngage with Metra on a quarterly basis to discuss CPKC's forecasted future train count increases on the Elgin Subdivision and Metra's planned or proposed operational changes, to the extent supported by Metra.")

¹⁶ In addition, the TMDS/Wabtec dispatching records to which Metra has access would provide Metra with the ability to identify each and every stop made by a CPKC train and the location and duration of that stop, both in real time and via playback of historical records.

reporting (i.e., trains between Bensenville and Randall Road, Bensenville and Rondout, or Bensenville and interlockings east of Bensenville (i.e., B12, Cragin Junction, or A5)).¹⁷

Whatever Metra might have in mind, there is no justification for the burdensome reporting it proposes. Again, Metra will have complete knowledge of any potential impacts on Metra’s passenger trains caused by CPKC operations on Metra trackage, and CPKC anticipates ongoing dialog with Metra about how the two of them accommodate one another’s operations on this trackage.

- Metra Monthly Item 1 Individual Train Item 3 would require monthly reporting of CPKC’s gross ton miles.

As with the first item outlined above, monthly gross ton miles would not have anything to do with potential operational impacts on Metra. Reporting them would impose unnecessary burdens and threaten to reveal competitively sensitive information about CPKC’s future traffic composition and operating details. In addition, Metra will have ample information about changes in the volume of CPKC’s freight traffic from its own records and CPKC’s reporting to the Board (e.g., regarding the number of trains and average train length).

* * *

At bottom, even if Metra could somehow establish that the reporting requirements imposed by Decision No. 35 could appropriately be reconsidered (which it has not attempted to – and could not – do), the specific additional reporting that Metra seeks would be unwarranted and inappropriate.

CONCLUSION

For the foregoing reasons, the Board should deny Metra’s Petition.

¹⁷ The one exception would involve occasional trains that make set outs or pick ups at Galewood Yard (east of Bensenville) to support the fluidity of Bensenville operations.

Respectfully submitted,



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April 24, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Applicants' Reply to Metra's April 4 Letter and Coalition to Stop CPKC's April 6 Reply 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