

LAW OFFICE OF DAVID L. MEYER
WWW.MEYERLAWDC.COM

1105 S STREET, N.W.
WASHINGTON, D.C. 20009
202-294-1399

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The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423

Re: Finance Docket No. 36500, *Canadian Pacific Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing on behalf of CPKC (*i.e.*, Applicants in the above-referenced matter) to offer a supplemental observation regarding the data reporting issues addressed in the Board's Decision No. 36 (at 2 n.3) and in CPKC's replies to Metra and BNSF. *See* CP-81/KCS-67 (filed Apr. 24, 2023); CP-82/KCS-68 (filed May 9, 2023).

Subsequent to those filings, the Board issued a decision in Ex Parte No. 772 in which it adopted a protective order providing for the classification of information as "confidential commercial information" (so-called "Category 3"), which would allow for the submission of information so designated to the Board without it becoming "available to other parties to the proceeding or their outside counsel or consultants." *Oversight Pertaining to Union Pacific R.R.'s Embargoes*, Ex Parte No. 772 (STB served May 15, 2023) at 5. The Board noted that such an order was appropriate for "oversight proceeding[s]." *Id.*

CPKC urges the Board to adopt a comparable protective order in this proceeding for use in connection with data submitted to the Board by CPKC in connection with the Board's oversight process in this case – which, as previously noted could be accomplished most efficiently by establishing a new sub-docket and service list (*see* CP-82/KCS-68 at 5). Substituting such a protective order for the one currently in effect would further the Board's oversight goals. It would facilitate CPKC's filing of information of extreme competitive

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sensitivity to assist the Board's review of the implementation of the CP/KCS transaction without undermining CPKC's ability to compete fairly and effectively.

For clarity, CPKC does not contemplate classifying as "Category 3" information material that CPKC might file in response to specific claims raised by other parties regarding CPKC's compliance with the conditions imposed by the Board, or any annual reporting to the public on the implementation of the Transaction that the Board might require. Rather, CPKC envisions classifying as "Category 3" the sort of highly sensitive information addressed in CP-82/KCS-68, such as railroad- and commodity-specific interchange volumes.

Please contact me with any questions.

Respectfully submitted,



David L. Meyer

*Attorney for Canadian Pacific
Kansas City Limited*

cc: All Parties of Record