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June 13, 2023

By E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

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

Dear Ms. Brown:

This letter is submitted on behalf of the Coalition to Stop CPKC (“Coalition”) in response to the letter submitted in this docket by Canadian Pacific Kansas City Limited (“CPKC”) on May 24, 2023. That letter asks the Board to adopt a protective order in this proceeding that would contain a category of “confidential commercial information” which, upon being so designated by CPKC, could not be viewed by any party in this proceeding or by their outside counsel or consultants. This category of documents would establish a secrecy level above that already afforded CPKC by the Highly Confidential category established in the protective order already in effect.¹ CPKC’s letter was not accompanied by a motion or a proposed draft order pursuant to usual Board practice.

The Coalition submits, consistent with its prior statements concerning the need for transparency regarding the merged railroad’s data reporting requirements,² that the Board should look with disfavor upon any attempts by CPKC to restrict or prevent the parties to this proceeding and their counsel and consultants from obtaining and reviewing data submitted by CPKC during

¹ Docket No. FD 36500, Decision No. 1, served April 2, 2021.

² See Coalition Reply to Metra’s Request for Clarification, filed on April 6, 2023 (“Reply to Metra”).

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the oversight phase of this proceeding. This should be particularly true for the Chicago-specific information CPKC has been directed to provide.³ The Coalition notes this latest request from CPKC follows other attempts by the railroad to reverse its broad promises of transparency made prior to the issuance of the March 15, 2023 Decision.⁴ Specifically, as to the Chicago-related reporting data, in CPKC's April 24, 2023 reply to Metra's April 4, 2023 letter requesting clarification of Decision 35, it stated 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."⁵ CPKC acknowledged that such data would include "detailed information on the volume of CPKC freight traffic and CPKC train length and transit times." Consequently, CPKC "would not object to sharing these metrics with Metra so long as confidentiality protections are in place." CPKC also stated it was not opposed to sharing this information with the Illinois Commerce Commission ("ICC") and "counsel for the Coalition [to Stop CPKC]."⁶ However, CPKC did not expressly assent to sharing the information with outside consultants of the ICC or the Coalition. This latter stance is at odds with the Board's standard practices concerning access to Confidential and Highly Confidential information and the protective order in effect in this proceeding, and the Board should reject such a limitation its forthcoming decision addressing data reporting requirements and processes.⁷

In its May 9, 2023 reply to BNSF Railway's reply to Metra, CPKC appeared to try to further limit access to Chicago operational data such as train length and transit times. Specifically, CPKC stated "*the details it would report only to the Board* are the additional details that the Board's Appendix B requires, all of which would involve competitively sensitive information (such as interchange volumes by carrier and commodity, *a break-out of train length by quartile*, detailed dwell time data at specific locations, and the addition of certain specific reporting locations)."⁸ This is directly contrary to CPKC's prior statements that such information would be disclosed subject to the terms of the protective order.

CPKC's May 24, 2023 letter is another attempt to further reduce transparency during the oversight process. While CPKC represents that this category of documents would be limited to "information of extreme competitive sensitivity," such as "railroad- and commodity-specific interchange volumes," acceding to CPKC's request nevertheless would provide a means for CPKC to try to obscure from parties, their counsel and consultants, data relevant to the oversight phase by designating it "confidential commercial information." The Board should require CPKC's

³ Docket No. FD 36500, Decision 35 at 119-120 and Appendix B, p. 199.

⁴ See Reply to Metra at 2-3, and footnote 5.

⁵ CP-81/KCS-67 at 3.

⁶ *Id.* at 4.

⁷ Docket No. FD 36500, Decision 36, served May 1, 2023 at 2.

⁸ CP-82/KCS-68 at 3 (emphasis supplied).

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request for increased secrecy to meet a very high standard of need, which CPKC has arguably not met.

I certify that a copy of this letter was served on all parties on the official service list of Docket No. FD 36500.

Sincerely,



Thomas W. Wilcox

Attorney for The Coalition to Stop CPKC