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August 3, 2023

VIA EMAIL

Ms. Danielle Gosselin
Director, Office of Environmental Analysis
Surface Transportation Board
395 E Street, N.W.
Washington, D.C. 20423

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

Dear Ms. Gosselin:

On July 14, 2023, CPKC railroad submitted its first “Quarterly Environmental Mitigation Measure Compliance Report.” The Coalition to Stop CPKC hereby submits the attached comments on the report’s discussion of some of the mitigation measures that affect the Coalition’s communities, for OEA’s consideration and further action.

Please don’t hesitate to call or email me if you have any questions or wish to discuss.

Sincerely,

Attorney for the Coalition to Stop CPKC

Cc: Mr. Joshua Wayland
David L. Meyer, Esquire
Jay C. Johnson, Esquire

COALITION TO STOP CPKC RESPONSES TO FIRST QUARTERLY REPORT TO OEA

**(The Absence of a Comment on a Mitigation Measure Listed in the Quarterly Report
Should not be Construed as Concurrence with CPKC's Statement)**

A. General Mitigation Measures

VM-General-01. The Applicants will continue to engage in good faith with potentially affected communities along the combined network, listen to their input related to the proposed merger and strive to reach negotiated agreements to address merger-related impacts.

CPKC accurately reports that Mr. Larry Lloyd, its Senior Director for Legislative Affairs who CPKC selected to be its liaison with Chicago communities, and other CPKC representatives met with Coalition representatives on April 11, 2023 and June 8, 2023. The Coalition does not question CPKC's good faith and the meetings were productive. However, our observations and interactions with CPKC suggest that it has not been fully forthcoming in disclosing information relevant to the mitigation measures the railroad is required to implement in Chicago. Instead, CPKC's representatives seem to disclose only the absolute minimum information CPKC has determined the mitigations require them to disclose. This has raised questions with the Coalition member communities about CPKC's commitment to transparency and accountability during the merger implementation and oversight process.

When pressed on specifics regarding post-merger train numbers, train length, speed, scheduling, etc., CPKC has consistently refused to provide these metrics to Coalition communities in the absence of a final decision by the Surface Transportation Board on post-merger data reporting requirements. The Board has referenced this impending action in its merger related decisions, but has yet to issue a decision for comment. Until that decision is issued the Coalition does not expect CPKC to provide it with operating and other data, leaving the Coalition to try obtain relevant data by other means.

The Coalition believes that transparency is vital in any merger process, especially when it involves potentially affected communities. Open dialogue and comprehensive information sharing are crucial to ensuring that affected communities are fully informed and can participate meaningfully in the monitoring process. We ask that OEA be vigilant to ensure that the appropriate level of transparency is maintained throughout the implementation and oversight process.

MM-General-02. The Applicants shall submit quarterly reports to OEA on the progress of, implementation of, and compliance with all Board-imposed environmental mitigation measures. The reporting period for these quarterly reports shall begin on the date of the Board's final decision authorizing the acquisition and continue for seven years, or one year after the Applicants have completed capital improvements related to the acquisition, whichever is longer. The Applicants shall submit copies of the quarterly reports within 30 days following the end of each quarterly reporting period and distribute the reports to appropriate federal and state agencies, as specified by OEA.

The Coalition requests that OEA take a proactive role early in this process to ensure that these quarterly reports contain sufficient detail to permit OEA and interested parties to determine how CPKC is implementing the mitigation measures, and the timeline for such measures to be implemented.

B. Freight and Passenger Rail Safety

VM-Rail-02. The Applicants will comply with the Safety Integration Plan (SIP), prepared pursuant to 49 C.F.R. Part 1106, which may be modified and/or updated as necessary to respond to evolving conditions and/or new information. In the event of a reportable hazardous materials release, the Applicants will notify appropriate federal, state, and local agencies, as required under applicable law.

OEA should not accept the general statement that “CPKC continues to progress the integration plans set out in its approved Safety Integration Plan (SIP) and has regular communications with FRA regarding the SIP” in future quarterly reports. Rather, OEA should require CPKC to provide details about the specific steps it has taken over the quarter to implement its SIP. This would enable affected communities to stay apprised of the efforts being made that will benefit them, and also to gauge whether CPKC is indeed in compliance with the SIP.

Similarly, CPKC should provide additional detail on reportable hazardous materials releases, even if that disclosure consists of a list of the federal, state, and local agencies to whom CPKC provided notice. Just stating merely that “all reportable releases were reported” provides no useful information to affected communities.

VM-Rail-04. The Applicants will offer to fund the participation in railroad focused emergency response training at the Association of American Railroads’ Security and Emergency Response Training Center in Pueblo, Colorado, of two qualified firefighters providing service within each of the potentially affected communities.

The Coalition has created a Public Safety Committee for the oversight phase of the merger. The members of this Committee have met directly with CPKC representatives to discuss training opportunities, specifically fire fighter emergency response training. While this Mitigation states that the American Railroads’ Security and Emergency Response Training Center in Pueblo, Colorado will be utilized, CPKC informed the Committee that the facility is unavailable to the Coalition.

As a stop-gap measure, CPKC has made three training dates available in August and October fire fighters to attend hazmat training at the Illinois Fire Service Institute (IFSI) in Champaign, IL. While the Coalition communities appreciate this opportunity, we reiterate the understanding that this training does not excuse CPKC from complying with the Mitigation’s directive that training occur at the Pueblo, CO facility. Further, the IFSI opportunity is flawed for two main reasons:

- 1. The training dates were first shared with the Committee on July 13, with the first training date on August 15. Scheduling fire fighters for overnight training a mere*

month ahead is neither easy nor customary. Combined with staffing shortages, this short notice will mean that many Coalition Communities will be unable to send fire fighters either in full or in part.

2. *CPKC has offered a stipend of \$864 for every Coalition fire fighter who completes the IFSI training. While this amount theoretically covers the transportation, food, and lodging for the training, it fails to compensate for the costs a community will incur to replace that fire fighter in his/her absence. Specifically, backfilling a qualified fire fighter with another qualified individual on the squad will trigger the payment of overtime for most Coalition Communities. This will cost each community thousands of dollars. The Coalition has submitted a request in writing to CPKC to cover the true cost of the training mandated by this Mitigation but has not yet received a response.*

VM-Rail-05. The Applicants will leverage CP's extensive emergency response equipment assets by reviewing coverage of those assets across CPKC. The Applicants will either redistribute existing assets or add new equipment assets to improve emergency response capabilities relating to the potentially affected communities on CPKC.

CPKC's response to this Mitigation states that it is conducting a review, and that upon completion of that review, "CPKC will determine whether any emergency response positioning is required." The Coalition first notes that this Mitigation is not limited to repositioning existing resources, but also covers adding new equipment to improve emergency response capabilities.

Second, the Coalition notes that this Mitigation proceeds from the conclusion by OEA that CPKC's emergency response capabilities need improvement. It does not include an option for CPKC to conclude it will do nothing in a particular affected community. Nevertheless, on July 13, the Coalition asked CPKC what assets would be added or repositioned to the Chicagoland area to improve emergency response capabilities. Notwithstanding the plain language of the Mitigation, CPKC representatives responded that Chicagoland was sufficiently covered with emergency response equipment and no new equipment would need to be added or repositioned.

The Coalition contends that such a "do nothing" approach is neither responsive nor permitted under VM-Rail-05. In light of CPKC's response, OEA should direct CPKC to comply with this Mitigation, or submit a petition to OEA or the Board detailing why taking no action in Chicagoland should be allowed.

MM-Rail-01. The Applicants shall comply with the SIP prepared under 49 C.F.R. part 1106 and 49 C.F.R. § 244.9, which may be updated as necessary, and shall continue to coordinate with FRA in implementing the SIP during the operations integration period. The ongoing safety integration process shall continue until FRA has informed the Board that the integration of Applicants' operations has been safely completed.

This Mitigation is substantially similar to VM-Rail-02, and the Coalition therefore has the same response to CP's identical general statement.

C. Grade Crossing Safety and Delay

VM-Grade Crossing-01. Although the Applicants have not identified any grade crossings that

would require mitigation based on precedent established in other approved mergers, the Applicants will, upon request, work with potentially affected communities in support of securing funding, in conjunction with appropriate state agencies, for crossing mitigation projects where they may be appropriate under criteria established by relevant state transportation departments to increase the safety of existing at-grade crossings.

CPKC's entry for this Mitigation fails to mention that the Village of Bensenville, Ill, has informed CPKC that it intends to undertake a grade separation project at York Road (Crossing 372170V). The estimated \$70 million project has already been awarded Congressionally Designated Spending in the amount of \$1 million from Congresswoman Delia Rameriz. Contrary to the directive in this Mitigation that CPKC "will, upon request, work with potentially affected communities in support of securing funding, in conjunction with appropriate state agencies," CPKC has thus far offered no support for this effort whatsoever despite being requested to do so.

Other Coalition communities are conducting initial feasibility studies as they investigate grade separation opportunities.

VM-Grade Crossing-02. The Applicants will operate under the General Code of Operating Rules rule numbers 6.32.6 (Blocked Public Crossings) and 6.32.4 (Clear of Crossings and Signal Circuits), which provide that, when practical, a standing train or switching movement must avoid blocking a public crossing longer than 10 minutes and, when practical, cars, engines and other equipment should not be left standing closer than 250 feet from a road crossing when there is an adjacent track.

During the reporting period, the Coalition communities experienced CPKC trains blocking crossings for extended periods of time. The Coalition is pursuing electronic monitoring of trains but, at this time does not have that technology in place. This means that visual observation of CPKC trains is generally only available during limited weekday, daytime hours. During the reporting period, the Coalition reported five (5) instances in which significant rail blockages occurred. The blockages occurred from standing trains, and also from very long trains that moved slowly over the tracks. Both cause lengthy delays for automobiles and pedestrians to cross the tracks.

The Coalition stresses to OEA that it is important for CPKC to continue report ALL instances of blocked crossings in its quarterly reports, not just blockages that CPKC determines are "a standing train or switching movement" longer than 10 minutes. Delays shorter than 10 minutes can result in first responders and other emergency services being unreasonably prevented from doing their critical jobs.

VM-Grade Crossing-06. The Applicants will notify Emergency Services Dispatching Centers for potentially affected communities of all crossings blocked by trains that are stopped and may be unable to move for a significant period of time.

CPKC's entry for this Mitigation states that its Public Safety Communications Center provided notice to local Emergency Services Dispatch Centers in Chicago on "those occasions when a train which was blocking a crossing and wouldn't be able to move for a significant period of time."

*In response, the Coalition submits that there currently are communication gaps between CPKC and Coalition Emergency Dispatch Centers (Addison Combined Dispatch Center and DuCom), leading to concerns about blocked crossings and their impact on emergency response times. First, the Coalition respectfully disagrees with CPKC. It has **not** consistently provided notice of blocked crossings to Coalition communities. On the contrary, Coalition members have been reaching out to CPKC's emergency number to inform the railroad when crossings are blocked. Surprisingly, in many cases CPKC's emergency employees have stated they are unaware of these blocked crossings, claiming that the information has not been relayed to them by CPKC's operations personnel.*

Secondly, the Coalition submits that the current communication gaps are the product of a lack of mutual understanding of when a crossing is blocked for a "significant period of time." In emergency response situations, time is of the essence, as it can be the difference between life and death. The Coalition argues that any blocked crossing is for a significant period of time when it hampers the response of first responders. In support of our argument, we draw attention to the National Fire Protection Association (NFPA) 1170 standard, which specifies that the first responding fire engine should arrive at the scene within 320 seconds. Accordingly, any train blocking a crossing for 5.3 minutes would render NFPA 1170 untenable and should, therefore, be considered a significant event.

The Coalition understands that CPKC may have a different view of when a blockage is "significant," but it is critical for all parties to be on the same page when it comes to reporting and dealing with blocked crossings, and a common understanding of the criteria of "significant period of time" is a critical component.

In light of these concerns, the Coalition urges OEA to address the communication issues between CPKC and the Coalition Emergency Dispatch Centers promptly. The Coalition also asks for OEA's assistance in ensuring accurate reporting and verification of crucial information pertaining to emergency response times and blocked crossings. The safety and well-being of the communities they serve are paramount, and the Coalition seeks collaborative efforts to resolve these issues effectively.

D. Community Agreements and Coordination

VM-Community-03. The Applicants will work with certain Chicago area communities with which they have not been able to reach agreements—DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg—to mitigate potential acquisition-related environmental impacts. Specifically, they will work with them to accomplish:

1. Subject to necessary FRA approvals and practicability, funding efforts towards the creation and implementation of quiet zones, including the costs of installation.
2. Installing and funding a predictive mobility system, interconnected with existing railroad crossing signals, that will deliver advanced notice of blocked crossings to citizens, police, fire, and rescue operations, and others.
3. Installing and funding ITS Interconnect for Advanced Warning Signs at strategic locations to give drivers information about occupied crossings, allowing them to make better on-the-spot decisions.

4. Installing and funding Positive Train Control wireless technology tie- ins at crossings adjacent to Metra platforms, which will minimize the activation of crossing lights and gates.

With respect to the work described above, the Applicants anticipate that the Applicants or their subcontractors will perform the work. In the case of instances where work may be performed by others, the Applicants would reimburse reasonable and customary charges for such work. Because Metra owns the trackage that CP uses in these communities, Metra would have to approve the implementation of this mitigation measure. The Applicants would work with Metra, the communities, and any other relevant agencies to seek approval for this mitigation measure.

The Coalition believes that CPKC's first quarterly report paints a rosier picture than what actual events have occurred. Indeed, as mentioned, the Coalition formally sat down with CPKC on two occasions during the reporting period but the Coalition has not been presented with a "roadmap for implementation," as CPKC states. If such a roadmap does exist, the Coalition would be very interested in seeing it.

CPKC has informed the Coalition that it issued an RFP for the technologies contemplated under VM-Community-03, but Coalition Communities were not consulted in developing the scope, timeline, or sourcing of the contemplated technologies.

The Village of Roselle has discussed the implementation of its Quiet Zone with CPKC.

CPKC has begun to run new, additional intermodal and automotive trains over the tracks running through the Coalition communities, but they have not implemented a single one of the capital improvement technologies contemplated under VM-Community-03. In order to provide basic emergency coverage to impacted communities pending the installation of such technologies, the Coalition requested CPKC to share a basic train schedule with first responders so they could attempt to roughly anticipate needed staffing coverage during long train impacts. To date, CPKC has strongly opposed this request. The Coalition respectfully asks for OEA's assistance in convincing CPKC to communicate information on their planned train movements with the first responder of impacted communities until predictive mobility is interconnected with the emergency response system.

As to the final comment in the quarterly report that CPKC is working towards individual meetings with Coalition communities, the Coalition notes that this action is being undertaken over the Coalition's clearly stated objection. CPKC's liaison and other representatives were instructed that the full membership of the Coalition is the proper venue for interaction during the oversight phase of the merger, and that if an individual community has a specific concern, that community will take the initiative to reach out to CPKC directly.