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SERVICE DATE—SEPTEMBER 1, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36500 (Sub-No. 6)<sup>1</sup>

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY  
COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC  
RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION;  
AND DELAWARE & HUDSON RAILWAY COMPANY, INC.

—CONTROL—

KANSAS CITY SOUTHERN; THE KANSAS CITY SOUTHERN RAILWAY COMPANY;  
GATEWAY EASTERN RAILWAY COMPANY; AND  
THE TEXAS MEXICAN RAILWAY COMPANY  
(GENERAL OVERSIGHT)

Decided: August 31, 2023

AGENCY: Surface Transportation Board.

ACTION: Decision No. 1; Notice of General Oversight Proceeding and Guidance on Reporting Requirements.

SUMMARY: By decision served March 15, 2023 (Decision No. 35), the Board approved the acquisition of control by Canadian Pacific Railway (CP) of Kansas City Southern (KCS), resulting in the newly merged entity, Canadian Pacific Kansas City Limited (CPKC). As a condition of the Board's approval, the Board imposed a seven-year oversight period, during which the Board will closely monitor CPKC's compliance with, and the effectiveness of, the conditions imposed by the Board. Throughout the oversight period, CPKC is required to report numerous service, operational, and competition-related metrics at prescribed frequencies, as described in Decision No. 35, Appendix B, "Reporting & Recordkeeping Requirements." The Board is now instituting this proceeding to implement the general oversight condition and provides further guidance regarding CPKC's reporting and recordkeeping obligations.

DATES: Any person who wishes to participate in this proceeding as a Party of Record must file, no later than September 11, 2023, a notice of intent to participate. CPKC's first data submission, including information for the required five-year lookback period (with the one exception pertaining to car miles described below), is due by **October 15, 2023**, with subsequent submissions due on the 15th of each month for the duration of the oversight period. CPKC's

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<sup>1</sup> A copy of this decision is being served on all parties of record on the service list in the main docket, FD 36500.

first report on truck-to-rail and rail-to-rail diversions will be due **January 15, 2024**, and will be due every six months thereafter, for the duration of the oversight period.

**ADDRESSES:** Any filing submitted in this proceeding must be filed with the Board via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each filing must be sent to (1) CPKC's representative, David L. Meyer, Law Office of David L. Meyer, 1105 S Street, N.W., Washington, DC 20009; and (2) any other person designated as a Party of Record on the service list for this subdocket.

**FOR FURTHER INFORMATION, CONTACT:** Valerie Quinn at (202) 740-5567. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

**SUPPLEMENTARY INFORMATION:** In Decision No. 35, the Board established oversight for a period of seven years, during which the Board will closely monitor CPKC's compliance with, and the effectiveness of, the imposed conditions. Canadian Pac. Ry.—Control—Kan. City S., FD 36500 et al., slip op. at 142 (STB served Mar. 15, 2023). On May 8, 2023, the Board held a technical conference with CPKC on the logistical aspects of the reporting and recordkeeping requirements ordered during the oversight period (e.g., scope, methodology, and formatting). (See Tech. Conf. Tr., May 8, 2023; CPKC Tech. Conf. Ex., July 13, 2023.) The Board is now instituting this proceeding to implement the general oversight condition and provide further guidance regarding CPKC's reporting and recordkeeping obligations during the oversight period.

Historical Data. In Decision No. 35, the Board ordered CPKC to provide monthly historical information for the interchange volume and operational datasets for a five-year period dating back from April 14, 2023. Decision No. 35, FD 36500 et al., slip op. at 196, 197-99. It required CPKC to provide this information with its first monthly submission. Id. at 196, 197. At the technical conference, CPKC indicated that while it would be ready to make its first submission by July 15, 2023, and while it would have a "considerable amount of historical data available to report," it likely would not be able to submit all of the historical information by that date due to uncertainties about applying methodologies adopted to measure the required operational data to past events. (Tech. Conf. Tr. 26:20-28:4, 32:13-33:8 ("We haven't been going back and making sure that [the methodologies] work all the way back . . . that is something we'll be doing once we get more closure on exactly how staff sees us implementing a particular metric or methodology.")) Given the additional time beyond the anticipated due date of July 15 that CPKC will have to make its first submission, with the exception of car mile data discussed below, CPKC must provide all of the required historical data with its first monthly report October 15, 2023.

Traffic Tapes. In Decision No. 35, the Board imposed a condition requiring CPKC to preserve its 100% traffic tapes for the five-year lookback period and for the duration of the oversight period. Decision No. 35, FD 36500 et al., slip op. at 82.

*Definition of 100% Traffic Tapes.* The Board stated that the 100% traffic tapes to be retained should include origin, destination, and interchange information; contract and tariff information; and revenue information on a country-specific basis. Id. At the technical

conference, CPKC expounded upon its understanding of what the 100% traffic tapes would contain. (Tech. Conf. Tr. 80:12-81:15.) CPKC indicated that its 100% traffic tape data would consist of traffic files generally drawn from revenue waybill data and presented a PowerPoint slide, (Slide 7), listing the associated data fields. (CPKC Tech. Conf. Ex., Slide 7, July 13, 2023.) On June 28, 2023, following the technical conference, CPKC provided descriptions of the Slide 7 data fields, with notations indicating data fields that it does not anticipate populating or that it proposes to delete. (CPKC Tech. Conf. Ex., June 28, 2023.)

The Board determines that the 100% traffic tapes to be retained for the five-year lookback period and for the duration of the oversight period shall include all the data listed in Slide 7, as defined in the descriptions submitted on June 28, 2023. While CPKC proposes to delete certain data fields, all the fields in Slide 7 are necessary to ensure the usefulness and completeness of the traffic tapes, and all must be retained so as not to render other data unusable. For the same reason, CPKC is required to retain the following additional information:

#### **Price Data**

- Applicable fuel surcharge rate (e.g., rate per car mile, percentage rate);
- Applicable fuel surcharge basis fuel price (e.g., No. 2 Diesel Retail Sales by All Sellers, On-Highway Diesel, Highway Diesel Fuel);
- Provider of car and container/trailer (e.g., CPKC- or predecessor-owned, CPKC- or predecessor-leased, shipper, or foreign road);
- The contract, agreement, tariff, pricing authority, etc., that the shipment is billed under, including the amendment and item numbers where applicable;
- The country to which the CPKC or predecessor revenues, surcharges, or rebates are applied (i.e., United States, Canada, or Mexico);

#### **Quantity Data**

- For both legacy CP and KCS/ Kansas City Southern de México, S.A. de C.V. (KCSM) data, a weight measure indicator that identifies the unit of measure for every record it preserves in its 100% traffic tapes (e.g., pounds, short tons, metric tons, hundredweight);<sup>2</sup>

#### **Route Data<sup>3</sup>**

- For received rebilled/Rule 11 traffic, the origin waybill cross reference (origin railroad, waybill number, and date);
- For delivered rebilled/Rule 11 traffic, the delivered waybill cross reference (receiving railroad, waybill number, and date);
- For shipments received in interchange, the date and time the shipment was interchanged;
- For shipments delivered in interchange, the date and time the shipment was interchanged;

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<sup>2</sup> CPKC indicates that KCS/ KCSM does not retain a unit of measure for the weight of its shipments. (CPKC Tech. Conf. Ex. 4, June 28, 2023.)

<sup>3</sup> CPKC is required to retain this data even if the data must be sourced from systems separate from finance/accounting.

- For shipments terminated on CPKC or predecessor system, the date and time the shipment was terminated;
- Total actual loaded movement miles;
- Total actual empty movement miles;
- Total actual miles used to derive applicable fuel surcharges;
- Total actual loaded miles on the CPKC or predecessor system;
- Total actual empty miles on the CPKC or predecessor system.

*Submission of 100% Traffic Tapes.* The Board left open the possibility that it would require CPKC to submit its 100% traffic tapes to the Board, noting that such information could be valuable in corroborating reported information and providing visibility into traffic moving across the merged networks. Decision No. 35, FD 36500 et al., slip op. at 144.

BNSF Railway Company (BNSF) and the American Chemistry Council, the Fertilizer Institute, and the National Industrial Transportation League (collectively, Joint Associations) request that, consistent with past mergers, the Board ensure that the traffic tapes CPKC is required to preserve be submitted to the Board and made part of the record and available to interested parties, subject to protective order to ensure confidentiality.<sup>4</sup> BNSF asserts that the traffic tape data would be an important element in assessing potential gateway foreclosure, particularly the gateway to Mexico. (BNSF Comment 4.) BNSF further contends that allowing interested parties access to the traffic tape data would “greatly simplify the [Board] staff’s analysis if interested parties have access to the traffic tapes and an opportunity to submit analyses and comments on the data.” (*Id.*) The Joint Associations endorse these arguments. (Joint Ass’ns Comment 1.)

CPKC asserts that making its traffic tapes part of the record is unwarranted and inappropriate, as this would “disclose not only the level of individual shipper rates, but myriad other commercially and competitively sensitive details about every traffic movement—all of which would be sensitive not just from CPKC’s vantage but also from the perspective of [shippers] and CPKC’s interchange partners.” (CPKC Reply 7, May 9, 2023.) Rather, CPKC asserts, should issues arise during the oversight period, the Board may then consider whether targeted discovery of CPKC traffic data, including certain CPKC waybill data, is warranted. (*Id.* at 8.)

The Board continues to recognize the potential usefulness of the data to be included in the retained traffic tapes but will not require CPKC to submit its traffic tapes to the Board at this time. The extensive data to be submitted by CPKC—including interchange volumes, diversion studies, and service metrics—will greatly assist the Board and other interested parties in assessing and evaluating any transaction-related impacts, including the competitiveness of service provided by CPKC at the affected gateways, as well as any capacity issues or service

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<sup>4</sup> BNSF’s and Joint Associations’ comments were filed on April 19, 2023, and April 24, 2023, respectively, in reply to a request filed by Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (Metra), seeking clarification of, and certain modifications to, the oversight conditions imposed by the Board. Metra’s request is addressed in a separate decision.

degradations. However, the Board recognizes that this is extraordinarily commercially and competitively sensitive data and that certain parties may have an opportunity to receive more targeted data, subject to appropriate protections, in discovery if a dispute were to arise. The Board may require CPKC to submit its traffic tapes, or certain data contained therein, at a later date, as it has done in prior cases.

Reporting Guidance and Clarification. As part of the Board’s oversight condition, CPKC will report on numerous competitive, service, and operational metrics at prescribed frequencies, as described in “Reporting & Recordkeeping Guidelines,” Appendix B of Decision No. 35. Decision No. 35, FD 36500 et al., slip op. at 196-99. During the technical conference, CPKC informed Board staff of certain limitations in providing the required information, as well as its intention to report data not explicitly listed in Appendix B. The Board addresses these issues below. Moreover, those participating in this oversight proceeding, including other carriers sharing facilities with CPKC, should consider collecting and retaining their own information to substantiate any future claims of post-merger impacts, should problems on lines shared with CPKC ever arise.

*Car Miles Data for CPKC Traffic Volumes Interchanged at Gateways.* In Decision No. 35, the Board explained that CPKC should be prepared to discuss at the technical conference its ability to provide car mile data for traffic subject to CPKC’s interchange reporting obligations, along with any burden associated with that data’s production. Decision No. 35, FD 36500 et al., slip op. at 82. At the technical conference, CPKC stated that its data source for the required traffic volume information “doesn’t have a measure of actual car miles on the network.”<sup>5</sup> (Tech. Conf. Tr. 78:5-8.) CPKC indicated that while it could provide an “estimate” of that data, it would need to derive it from revenue information from the CPKC waybill. (Id. at 78:13-79:4; see also id. at 97:1-16 (“[W]e . . . would be using the implicit mileage that’s reflected in a calculated ton miles figure . . .”).) It asserted that this effort would not yield a “precise measure of actual car miles.” (Id. at 79:5-11; see also id. at 97:1-16 (stating that such calculation would provide an estimate not necessarily tied to the actual route of movement).)

Although the Board emphasized in Decision No. 35 that length of haul is not necessarily determinative of traffic share for competing movements, it nonetheless recognized some relationship between traffic share and the relative length of the competing carriers’ routes. Decision No. 35, FD 36500 et al., slip op. at 34. Information regarding length of haul may provide important context for understanding why certain CPKC traffic currently interchanged with a competing carrier may subsequently be diverted onto a longer haul on the CPKC network.

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<sup>5</sup> Separately, at the technical conference, CPKC noted that Decision No. 35’s reference to “count of cars interchanged,” Decision No. 35, FD 36500 et al., slip op. at 196, read literally, may not capture intermodal traffic moved via container or trailer, (Tech. Conf. Tr. 60:8-61:12). The Board clarifies that it intended for CPKC to report on both cars and intermodal units interchanged with connecting carriers at the gateways identified in Appendix B, characterized by the two-digit STCC identified on the waybill and broken out by interchange partner. The Board also acknowledges limitations regarding what can be known about the commodities moved in intermodal traffic. (See Tech. Conf. Tr. 64:15-65:1 (“We know we don’t know what’s inside those containers. We know on the waybill they’re classified as freight all kinds.”).)

Accordingly, CPKC is ordered to provide the car miles (or intermodal unit miles, see supra note 5) associated with the interchange traffic volumes that it must report pursuant to Decision No. 35, also characterized by two-digit STCC, broken out by interchange partner, and including five years of historical data. With its first submission, CPKC must explain the methodology used to derive this information. For this metric, CPKC may take additional time to calculate the required historical data, if necessary, but must offer a date in its first submission by which it will submit that information.

*Diversion Reporting by Route or Corridor.* In Decision No. 35, the Board explained that CPKC should be prepared to discuss at the technical conference its ability to provide the required data for truck-to-rail and rail-to-rail diversions (i.e., carload volumes characterized by two-digit STCC) on a corridor- or route-specific basis and any associated burden that would be incurred in doing so. Decision No. 35, FD 36500 et al., slip op. at 82. At the technical conference, CPKC indicated that it currently envisions reporting such information mostly on a regional basis (e.g., traffic between the upper Midwest and Mexico) and questioned the usefulness of more granular reporting. (Tech. Conf. Tr. 93:6-94:10.) It noted, however, the possibility of reporting specific business “wins” qualitatively. (Id. at 94:3-10 (“[T]he Marketing Department may know very well that a given customer decided to award us the business instead of a prior Class 1 in this particular lane or from this plant to this destination or what have you, and then we’ll know that and I see that as more of a qualitative report than a quantitative report . . .”).) The Board will decline at this time to order CPKC to report the required diversion data on a corridor- or route-specific basis, given the possibility that the sort of reporting that CPKC is considering may well provide a useful and complete understanding of post-merger diversions to the CPKC network. In its first diversion report, however, CPKC must provide justification for the level of detail chosen to present the information required in Decision No. 35. Should CPKC choose not to report volumes on a corridor- or route-specific basis, the Board may require that information to be provided in subsequent reports.<sup>6</sup>

*Neches River Bridge.* CPKC is required to provide, by railroad, certain operational metrics for trains operating over the Neches River Bridge. Decision No. 35, FD 36500 et al., slip op. at 107. During the technical conference, CPKC indicated that, while it could provide operational metrics for CPKC and Amtrak trains, it would not be able to provide separate metrics for Union Pacific Railroad Company (UP) and BNSF trains. (Tech. Conf. Tr. 144:3-10; see also CPKC Tech. Conf. Ex., Slide 29, July 13, 2023.) While the Board recognizes that CPKC’s current practices may only capture aggregated data for UP and BNSF trains at the Neches River Bridge, the record demonstrates that CPKC is capable of providing separate operational metrics for UP and BNSF. (See CPKC Reb., R.V.S. Elphick/Orr, paras. 57 & 58 & Table 2, July 13, 2022 (showing separate train counts and occupancy times for UP and BNSF).) Therefore, CPKC is ordered to provide separate operational metrics for UP and BNSF trains over the Neches River Bridge, as described in Decision No. 35, to the maximum extent practicable. With its first submission, CPKC must also describe in detail the methodology it outlined at the Technical Conference for measuring occupancy times and minutes held at the Neches River Bridge,

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<sup>6</sup> Regardless of the level of detail chosen for reporting the required diversion data, any such corridor- or route-specific volume data possessed by CPKC for any of the CP or KCS lines subject to this proceeding should also be provided.

including any limitations associated with that approach. (Tech. Conf. Tr. 143:14-154:22; see also id. at 155:1-6 (noting limitations on scope of historical data reporting); CPKC Tech. Conf. Ex., Slides 27-28, July 13, 2023.)

*Laredo Bridge Hold Time Methodology.* CPKC is also required to provide, by railroad, certain operational metrics for trains operating over the Laredo Bridge, including “minutes held prior to moving over the bridge per movement.” Decision No. 35, FD 36500 et al., slip op. at 107. At the technical conference, CPKC informed staff that the statistics it maintains for operations over the Laredo Bridge do not capture minutes held prior to movement over the bridge but that CPKC would consider other approaches to consistently track hold times at the Laredo Bridge. (Tech. Conf. Tr. 174:20-177:16, 179:7-180:5.) The Board directs CPKC to report hold time at the Laredo Bridge based on whatever alternative approach it develops, and, with its initial data submission, provide an explanation of the methodology it uses to derive that information.

*Methodological Variations & Reporting Limits for Non-CPKC Trains & Lines.* CPKC also must report train count, length, and transit and dwell time statistics for trains operating over certain additional segments as part of its operational metrics. Decision No. 35, FD 36500 et al., slip op. at 106-07. CPKC states that it will use either train movement event data, Centralized Traffic Control (CTC) signal data, or geographic information system (GIS) data<sup>7</sup> to capture the required information, depending on which carrier owns the underlying segment and/or whether CPKC is reporting on its own train movements or those of a different railroad. (See generally CPKC Tech. Conf. Ex., Slides 17-63, July 13, 2023.) It also identifies certain limits on its ability to collect the ordered data with respect to non-CPKC train movements and/or movements on non-CPKC owned lines. For example, CPKC indicated that it would rely on GIS data to measure transit and dwell time for CPKC trains on lines where it does not have access to signal data, but that it will only be able to provide historical data for these metrics to mid-2021. (Tech. Conf. Tr. 163:16-165:2, 185:1-12; see also CPKC Tech. Conf. Ex., Slides 36-37, 53-54, 57-58, July 13, 2023.) CPKC also explained that it would be unable to provide counts of non-CPKC trains on BNSF-owned lines in the Twin Cities area, given its lack of visibility into those movements. (Tech. Conf. Tr. 135:12-19; see also CPKC Tech. Conf. Ex., Slide 23, July 13, 2023.) In addition, CPKC indicated that while it will be able use CTC signal data to measure counts of UP trains moving over the CPKC Polo Line, it will not be able to verify the identity of those trains with complete certainty. (Tech. Conf. Tr. 112:15-113:22 9 (“probably a very good assumption 99 percent of the time” that it is a UP train); see also CPKC Tech. Conf. Ex., Slide 18-19; 22-23; 27-29, July 13, 2023.) The Board recognizes CPKC’s need to use a variety of methodologies to collect the operating statistics ordered by the Board, and it understands that there are limits associated with the collection of information for lines not owned by CPKC and for trains not operated by CPKC. It orders CPKC, with its initial data submission, to provide for each reporting segment an explanation of the methodology used to calculate the required train

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<sup>7</sup> GIS data are collected for locomotives, track, and signal infrastructure through the use of Positive Train Control systems, which are “integrated command, control, communications, and information systems for controlling train movements with safety, security, precision, and efficiency.” See Positive Train Control (PTC) Info. (R&D), <https://railroads.dot.gov/train-control/ptc/positive-train-control-ptc-information-rd> (last visited August 24, 2023).

count, length, and transit and dwell time statistics (including with respect to the bridges, where applicable), and any limitations associated with that approach. As noted above, the Board also encourages other stakeholders to retain any of their own data that would be helpful to substantiate any future claims regarding post-merger impacts on shared lines.

*Customer Experience Metrics.* During the technical conference, CPKC noted that the “Customer Experience” service metrics it is required to report are those that CPKC currently reports pursuant to United States Rail Service Issues—Performance Data Reporting, Docket No. EP 724 (Sub-No. 4) and Urgent Issues in Freight Rail Service—Railroad Reporting, Docket No. EP 770 (Sub-No. 1). (Tech. Conf. Tr. 41:15-45:3; see also CPKC Final Br., App. A at A8, Oct. 21, 2022.) The Board clarifies that, by reporting the customer service metrics in those dockets, CPKC will be in compliance with its obligations in this proceeding and need not include those metrics in its monthly submissions in this subdocket. Should the reporting obligations in EP 724 (Sub-No. 4) and/or EP 770 (Sub-No. 1) be discontinued, CPKC shall continue to submit these customer service metrics in its monthly submissions in this proceeding for the duration of the oversight period.

In the technical conference, CPKC highlighted two categories of “Customer Experience” service data that are not included in its reporting for EP 724 (Sub-No. 4) or EP 770 (Sub-No. 1) and that it intends to report in this subdocket. First, CPKC intends to report on delays caused to Metra trains by CPKC freight trains on Metra’s Milwaukee District-West Line and Milwaukee District-North Line, to the extent Metra provides the requisite data and detailed information to CPKC. (See Decision No. 35, slip op. at 111; Hr’g Tr. 1623:6-12, Oct. 6, 2022; Tech. Conf. Tr. 103:15-105:1.) Second, CPKC states that it will report the weekly average percentage of trains departing on time from Wylie Intermodal Terminal and the average train speed on the Meridian Speedway, between Shreveport, La., and Meridian, Miss. (Hr’g Tr. 1622:7-13, Oct. 6, 2022; Tech. Conf. Tr. 98:15-99:12.) While CPKC had discussed reporting these metrics during this proceeding, they are not explicitly included in the reporting requirements contained in Appendix B. The Board will hold CPKC to its representations regarding Metra delay and Wylie Intermodal Terminal and Meridian Speedway reporting, and CPKC shall include this data as part of its publicly filed Customer Experience service metrics. See Decision No. 35, FD 36500 et al., slip op. at 143.

**Reporting Format.** CPKC must submit its reports as filings to the Board, consisting of an electronic copy of the data. Board staff will provide revised templates to help facilitate CPKC’s data submissions.<sup>8</sup> CPKC shall provide explanations of its methodologies for deriving the required information with its initial filing, as discussed above.<sup>9</sup>

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<sup>8</sup> For discussion purposes, Board staff provided sample templates to CPKC in advance of the technical conference. Those drafts were subsequently posted to the docket in Docket No. FD 36500 on July 27, 2023. The sample templates have been revised to account for certain reporting issues discussed at the technical conference and above and will be posted to the docket in this oversight proceeding.

<sup>9</sup> Several revisions and minor technical corrections have been made to the “Reporting & Recordkeeping Requirements” contained in Appendix B of Decision No. 35 in response to

Inflation Index. In Decision No. 35, the Board ordered, during the oversight period, CPKC to provide to a shipper a written justification upon request for any rate increase above the rate of inflation for interline movements subject to CPKC's open gateway obligation. Decision No. 35, FD 36500 et al., slip op. at 173. On May 30, 2023, consistent with Decision No. 35, id. at 78 n.131, CPKC petitioned the Board for permission to use the Índice Nacional de Precios al Consumidor (INPC), as reported by Mexico's National Institute of Statistics, Geography and Informatics, to measure the rate of inflation for movements in Mexico. (CPKC's Pet. Respecting Mex. Inflation-Adjusted Index 1.) No party opposed CPKC's petition, and for the reasons described therein, the Board approves use of the INPC for purposes of the conditions imposed in Decision No. 35.

Protective Order. For the oversight subdocket, the Board adopts the protective order imposed in the main docket of this proceeding. See Canadian Pac. Ry.—Control—Kan. City S., FD 36500 (STB served Apr. 2, 2021). Parties may submit filings, as appropriate, under seal marked Confidential or Highly Confidential pursuant to the protective order.

Service List. A copy of this decision is being served on all parties of record in Docket No. FD 36500. This decision will serve as notice that persons who were parties of record in Docket No. FD 36500 will not automatically be placed on the service list as parties of record in the general oversight proceeding, Docket No. FD 36500 (Sub-No. 6). Any person who wishes to participate in this oversight proceeding as a party of record must file, in this subdocket, no later than September 11, 2023, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on CPKC's representative.

It is ordered:

1. Any person who wishes to participate in this oversight proceeding as a party of record must file, in this subdocket, a notice of intent to participate, no later than September 11, 2023, accompanied by a certificate of service indicating that the notice has been properly served on CPKC's representative.

2. CPKC's first data submission, including information for the five-year lookback period (with the one exception pertaining to car miles described above), is due by October 15, 2023, with subsequent submissions due on the 15th of the month for the duration of the oversight period.

3. CPKC's first report on truck-to-rail and rail-to-rail diversions will be due January 15, 2024, and will be due every six months thereafter, for the duration of the oversight period.

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certain matters discussed above and to describe the reporting requirements in a manner consistent with how the data will be reported in the templates. The Board also corrects minor typographical errors contained in the original appendix. An amended "Reporting & Recordkeeping Requirements," along with a redline to the original version, is appended to this decision.

4. This decision will be published in the Federal Register.
5. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz. Board Member Primus concurred with a separate expression.

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BOARD MEMBER PRIMUS, concurring:

I concur with today's decision. However, I maintain my objections to the Board's approval of the transaction, as stated in my March 15, 2023 dissent.

## APPENDIX

### AMENDED REPORTING & RECORDKEEPING REQUIREMENTS

#### Gateways Conditions

##### *Item 1*

Applicants will provide a monthly report containing the following information related to interchange volumes at gateways. With their first submission, Applicants will also provide the same historical monthly information for a five-year period dating back from the effective date of this decision, or if data is no longer available for the entirety of that time period, then from the earliest date for which it is available. This data will be used to establish a baseline by which to interpret future changes.

Count of cars/intermodal units interchanged with connecting carriers at interchange.

- CP Interchange Locations:
  - Eastport, Minneapolis/St. Paul, Chicago, and Kansas City
- KCS Interchange Locations:
  - Laredo, Robstown, Beaumont, Shreveport, Dallas, Jackson, Meridian, East St. Louis, Kansas City, and New Orleans

Information should include the total count of cars/intermodal units interchanged (i) categorized by two-digit STCC, (ii) broken out by interchange partner, and (iii) with associated car/intermodal unit miles.

##### *Item 2*

Applicants will report on a biannual basis (every six months) the following information, categorized by two-digit STCC and on a carload basis:

- Truck-to-rail diversions on the CP and KCS lines subject to this proceeding.
- Rail-to-rail diversions on the CP and KCS lines subject to this proceeding broken out in the following categories:
  - Joint line movements converted to single line service
  - Movements that CPKC has diverted from other railroads on to the merged system

##### *Item 3*

Applicants will preserve their 100% traffic tapes for a five-year period dating back from the effective date of this decision and for the duration of the oversight period. The data to be preserved includes all data that Applicants compile and maintain in their 100% traffic tapes in the ordinary course of business, including but not limited to the following for CP and KCS operations during the five-year lookback period, and for CPKC operations during the oversight period, in the U.S. and for all transborder movements between the U.S. and Mexico or Canada: origin, destination, and interchange information; contract and tariff information; and revenue

information on a country-specific basis. It must also include the data that the Board ordered to be retained in Decision No. 1 of the oversight proceeding.<sup>10</sup>

*Item 4*

Applicants will establish protocols and recordkeeping practices sufficient to enable CPKC to respond promptly and accurately to inquiries by the Board and/or shippers in the event future concerns or disputes arise in connection with the open gateway conditions imposed in this decision, including being able to provide the Board with a list of rate increases above inflation for interline movements subject to the open gateway obligation.

**Customer Experience**

On a monthly basis, Applicants will report weekly data on the service-related metrics pertaining to Metra on-time performance, on-time train departures from the Wylie Intermodal Terminal, and average train speeds on the Meridian Speedway. Service-related metrics detailed in the CPKC Service Promise and Attachment 1 of their Final Brief will be reported in Docket Nos. EP 724 (Sub-No. 4) and EP 770 (Sub-No. 1).<sup>11</sup> With their first submission, Applicants will provide a description of the methodology used to compile this data and will update that description if there is a subsequent change in methodology for calculating service metrics.

**Operational Data**

Applicants will provide a monthly report containing information related to train operations at the following locations, to the maximum extent practicable. With their first submission, Applicants will also provide the same historical monthly information for a five-year period dating back from the effective date of this decision, or if data is no longer available for the entirety of that time period, then from the earliest date for which it is available.

*Polo Line in Missouri*

For the segment from Airline Junction, Mo., to Polo, Mo.

- Weekly average number of trains per day by railroad
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length
- Weekly CPKC average transit time and maximum transit time

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<sup>10</sup> If data is no longer available for the entirety of the five-year lookback period, then Applicants must preserve traffic tapes from the earliest date for which they are available. To the extent the oversight record retention requirements described herein exceed those set forth at 49 C.F.R. parts 1220 and 1244, the oversight conditions control.

<sup>11</sup> Should the reporting obligations in Docket Nos. EP 724 (Sub-No. 4) and/or EP 770 (Sub-No. 1) be discontinued, CPKC shall continue to report these customer service metrics in its monthly submissions in this proceeding for the duration of the oversight period.

*Twin Cities Area*

For the lines between Hoffman Avenue and Northtown/Shoreham, broken out by the BNSF St. Paul Subdivision, the BNSF Midway Subdivision, the CP Withrow Subdivision, and the CP St. Paul Subdivision.

- Weekly average number of trains per day by railroad to the maximum extent practicable
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length
- Weekly CPKC average transit time and maximum transit time

Texas:

*Neches River Bridge*

By railroad (including passenger, bridge opening trains, and all other types of trains):

- Weekly average number of trains per day
- Weekly maximum trains per day
- Weekly 25th percentile, median, 75th percentile, and maximum train lengths
- Weekly number of trains over 10,000 ft
- Weekly total daily occupancy minutes
- Average occupancy time in minutes per movement
- Average minutes held prior to moving over the bridge per movement

*Beaumont, Tex. to Rosenberg, Tex. Segment*

- Weekly average number of CPKC trains per day
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train lengths
- Weekly number of CPKC trains over 10,000 ft
- Weekly CPKC average transit time and maximum transit time

*Houston, Tex. Terminal*

- Weekly CPKC average transit time
  - By route (e.g., Houston Subdivision Route and Beaumont Subdivision Route)
- Weekly CPKC average dwell

*Rosenberg to Laredo, Tex. Segment*

- Weekly average number of CPKC trains per day
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length
- Weekly number of CPKC trains over 10,000 ft
- Weekly CPKC average transit time and maximum transit time

*Laredo Bridge*

By railroad (including other types of trains)

- Weekly average number of trains per day
- Weekly maximum trains per day
- Weekly 25th percentile, median, 75th percentile, and maximum train length
- Weekly number of trains over 10,000 ft
- Weekly total daily occupancy minutes
- Average occupancy time in minutes per movement
- Average minutes held prior to moving over the bridge per movement to the maximum extent practicable

Metra & Chicago Communities:

*MD-W Line: between Randall Road (Tower B-35) and Tower B-17 (trains to/from Chicago Subdivision)*

- Weekly average transit time and weekly maximum transit time for CPKC through trains between Tower B-35 and Tower B-17
- Weekly average number of CPKC trains per day
  - For MD-W Line - Randall Road (Tower B-35) and Tower B-17 split between trains departing B35 and B17
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length
- Weekly number of CPKC trains over 10,000 ft

*MD-W Line: Bensenville Yard/Tower B-12 to Tower A-5*

- Weekly average transit time and weekly maximum transit time for CPKC through trains between Tower B-12 and Tower A-5
- Weekly average number of CPKC trains per day
  - For MD-W Line - Bensenville Yard/Tower B-12 to Tower A-5 split between trains departing B12 and A5
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length
- Weekly number of CPKC trains over 10,000 ft

*MD-N Line: Rondout to Tower A-5*

Between Rondout and Tower A-20 and between Tower A-20 and Tower A-5

- Weekly average transit time and weekly maximum transit time for CPKC through trains (CP/KCS Commitment)
- Weekly average number of CPKC trains per day
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length
- Weekly number of CPKC trains over 10,000 ft

*CP Marquette Subdivision Between Sabula Junction and River Junction*

- Weekly average transit time for CPKC through trains across the segment
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length
- Weekly average number of CPKC trains per day
- Weekly number of CPKC trains over 10,000 ft
- Status of capacity expansion work

**AMENDED REPORTING & RECORDKEEPING REQUIREMENTS**  
(Redline comparison to Appendix B of Decision No. 35)

**Gateways Conditions**

*Item 1*

Applicants will provide a monthly report containing the following information related to interchange volumes at gateways. With their first submission, Applicants will also provide the same historical monthly information for a five-year period dating back from the effective date of this decision, or if data is no longer available for the entirety of that time period, then from the earliest date for which it is available. This data will be used to establish a baseline by which to interpret future changes.

Count of cars/intermodal units interchanged with connecting carriers at interchange.

- CP Interchange Locations:
  - Eastport, Minneapolis/St. Paul, Chicago, and Kansas City
- KCS Interchange Locations:
  - Laredo, Robstown, Beaumont, Shreveport, Dallas, Jackson, Meridian, East St. Louis, Kansas City, and New Orleans

Information should include the total count of cars/intermodal units interchanged (i) categorized by two-digit STCC ~~and~~, (ii) broken out by interchange partner, and (iii) with associated car/intermodal unit miles.

*Item 2*

Applicants will report on a biannual basis (every six months) the following information, categorized by two-digit STCC and on a carload basis:

- Truck-to-rail diversions on the CP and KCS lines subject to this proceeding.
- Rail-to-rail diversions on the CP and KCS lines subject to this proceeding broken out in the following categories:
  - Joint line movements converted to single line service
  - Movements that CPKC has diverted from other railroads on to the merged system

*Item 3*

Applicants will preserve their 100% traffic tapes for a five-year period dating back from the effective date of this decision and for the duration of the oversight period. The data to be preserved includes all data that Applicants compile and maintain in their 100% traffic tapes in the ordinary course of business, including but not limited to the following for CP and KCS operations during the five-year lookback period, and for CPKC operations during the oversight period, in the U.S. and for all transborder movements between the U.S. and Mexico or Canada: origin, destination, and interchange information; contract and tariff information; and revenue

information on a country-specific basis.<sup>+</sup> It must also include the data that the Board ordered to be retained in Decision No. 1 of the oversight proceeding.<sup>2</sup>

*Item 4*

Applicants will establish protocols and recordkeeping practices sufficient to enable CPKC to respond promptly and accurately to inquiries by the Board and/or shippers in the event future concerns or disputes arise in connection with the open gateway conditions imposed in this decision, including being able to provide the Board with a list of rate increases above inflation for interline movements subject to the open gateway obligation.

**Customer Experience**

On a monthly basis, Applicants will report weekly data on the service-related metrics pertaining to Metra on-time performance, on-time train departures from the Wylie Intermodal Terminal, and average train speeds on the Meridian Speedway. Service-related metrics detailed in the CPKC Service Promise and Attachment 1 of their Final Brief, will be reported in Docket Nos. EP 724 (Sub-No. 4) and EP 770 (Sub-No. 1).<sup>3</sup> With their first submission, Applicants will provide a description of the methodology used to compile this data and will update that description if there is a subsequent change in methodology for calculating service metrics.

**Operational Data**

Applicants will provide a monthly report containing information related to train operations at the following locations, to the maximum extent practicable. With their first submission, Applicants will also provide the same historical monthly information for a five-year period dating back from the effective date of this decision, or if data is no longer available for the entirety of that time period, then from the earliest date for which it is available.

*Polo Line in Missouri*

For the segment from Airline Junction, Mo., to Polo, Mo.

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<sup>+</sup> ~~If data is no longer available for the entirety of the five-year lookback period, then Applicants must preserve traffic tapes from the earliest date for which they are available. To the extent the oversight record retention requirements described herein exceed those set forth at 49 C.F.R. parts 1220 and 1244, the oversight conditions control.~~

<sup>2</sup> If data is no longer available for the entirety of the five-year lookback period, then Applicants must preserve traffic tapes from the earliest date for which they are available. To the extent the oversight record retention requirements described herein exceed those set forth at 49 C.F.R. parts 1220 and 1244, the oversight conditions control.

<sup>3</sup> Should the reporting obligations in Docket Nos. EP 724 (Sub-No. 4) and/or EP 770 (Sub-No. 1) be discontinued, CPKC shall continue to report these customer service metrics in its monthly submissions in this proceeding for the duration of the oversight period.

- Weekly average number of trains per day by railroad
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length
- Weekly CPKC average transit time and maximum transit time

*Twin Cities Area*

For the lines between Hoffman Avenue and Northtown/Shoreham, broken out by the BNSF St. Paul Subdivision, the BNSF Midway Subdivision, the CP Withrow Subdivision, and the CP St. Paul Subdivision.

- Weekly average number of trains per day by railroad to the maximum extent practicable
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length
- Weekly CPKC average transit time and maximum transit time

Texas:

*Neches River Bridge*

By railroad (including passenger, bridge opening trains, and all other types of trains):

- Weekly average number of trains per day
- Weekly maximum trains per day
- Weekly 25th percentile, median, 75th percentile, and maximum train lengths
- Weekly number of trains over 10,000 ft
- Weekly total daily occupancy minutes
- ~~Occupancy~~ Average occupancy time in minutes per movement
- ~~Minutes~~ Average minutes held prior to moving over the bridge per movement

*Beaumont, Tex. to Rosenberg, Tex. Segment*

- Weekly average number of CPKC trains per day
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train lengths
- Weekly number of CPKC trains over 10,000 ft
- Weekly CPKC average transit time and maximum transit time

*Houston, Tex. Terminal*

- Weekly CPKC average transit time
  - By route (e.g., Houston Subdivision Route and Beaumont Subdivision Route)
- Weekly CPKC average dwell

*Rosenberg to Laredo, Tex. Segment*

- Weekly average number of CPKC trains per day
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length
- Weekly number of CPKC trains over 10,000 ft

- Weekly CPKC average transit time and maximum transit time

*Laredo Bridge*

By railroad (including ~~bridge opening trains and all~~ other types of trains)

- Weekly average number of trains per day
- Weekly maximum trains per day
- Weekly 25th percentile, median, 75th percentile, and maximum train length
- Weekly number of trains over 10,000 ft
- Weekly total daily occupancy minutes
- ~~Occupancy~~ Average occupancy time in minutes per movement
- ~~Minutes~~ Average minutes held prior to moving over the bridge per movement to the maximum extent practicable

Metra & Chicago Communities:

*MD-W Line: between Randall Road (Tower B-35) and Tower B-17 (trains to/from Chicago Subdivision)*

- Weekly average transit ~~time~~ time and weekly maximum transit time for CPKC through trains between Tower B-35 and Tower B-17
- Weekly average number of CPKC trains per day
  - For MD-W Line - ~~Bensenville Yard to Randall Road (Tower A-5B-35) and Tower B-17~~ split between trains departing ~~B12B35~~ and ~~A5B17~~
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length
- Weekly number of CPKC trains over 10,000 ft
- ~~Weekly CPKC average transit time and weekly maximum transit time~~

*MD-W Line: Bensenville Yard/Tower B-12 to Tower A-5*

- Weekly average transit ~~time~~ time and weekly maximum transit time for CPKC through trains between Tower B-12 and Tower A-5
- Weekly average number of CPKC trains per day
  - For MD-W Line - Bensenville Yard/Tower B-12 to Tower A-5 split between trains departing B12 and A5
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length
- Weekly number of CPKC trains over 10,000 ft
- ~~Weekly CPKC average transit time and weekly maximum transit time~~

*MD-N Line: Rondout to Tower A-5*

Between Rondout and Tower A-20 and between Tower A-20 and Tower A-5

- Weekly average transit ~~time~~ time and weekly maximum transit time for CPKC through trains ~~between Rondout and Tower A-5~~ (CP/KCS Commitment)
- Weekly average number of CPKC trains per day

- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length
- Weekly number of CPKC trains over 10,000 ft
- ~~Weekly CPKC average transit time and weekly maximum transit time~~

*CP Marquette Subdivision Between Sabula Junction and River Junction*

- Weekly average transit ~~time~~ time for CPKC through trains across the segment
- Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length
- Weekly average number of CPKC trains per day
- Weekly number of CPKC trains over 10,000 ft
- ~~Status of capacity expansion work~~