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November 1, 2023

The Honorable Cynthia T. Brown

Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

VIA E-FILING

Re: *Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC—Acquisition and Operation— Certain Rail Line of Meridian & Bigbee Railroad, L.L.C. in Lauderdale County, Mississippi and Choctaw and Marengo Counties, Alabama*

Finance Docket No. 36732

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is Applicants Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC's Reply to CN's Motion for Leave to Reference Earlier Submitted Response/Reply. CPKC's filing is designated as CPKC-4.

Please let me know if you have any questions regarding the enclosed.

Sincerely,

Stinson LLP

/s/ David F. Rifkind

David Rifkind

DFR:kr

Attachments

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36732

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY SOUTHERN
RAILWAY COMPANY, D/B/A CPKC**

—ACQUISITION AND OPERATION—

**CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO COUNTIES,
ALABAMA**

**CPKC'S REPLY TO CN'S MOTION FOR LEAVE TO REFERENCE EARLIER SUBMITTED
RESPONSE/REPLY**

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November 1, 2023

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RESPONSE/REPLY**

Applicants Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC, hereby reply in opposition to CN’s Motion for Leave to Reference Earlier Submitted Response/Reply (“CN’s Motion”) filed on October 31, 2023.

ARGUMENT

Just days before the Board is due to issue its decision on acceptance of CPKC’s Minor Application, CN asks the Board to accept its so called Reply to the Combined Norfolk Southern Notice of Intent to Participate and Request to Hold CPKC/CSXT Transcon Corridor Transaction in Abeyance¹ (“CN’s Reply”). While pretending that it is replying to NS’s Request and asserting that it has a right to do so, CN acknowledges that it is, in fact, filing an unauthorized reply to a reply as CN’s Reply responds to CPKC’s and CSXT’s respective October 27, 2023 replies to

¹ NS’s filing, referred to herein as “NS’s Request,” was filed on October 25, 2023.

NS's Request. The procedural deficiency of CN's Reply, however, runs deeper than that. As CN asks the Board to consolidate the CPKC and CSXT proceedings based on CN's own purported operational concerns, CN's pleading should be viewed in its own right as a motion to consolidate which is both untimely and unfounded. The Board should reject this effort to inject unnecessary delay into the Board's consideration of the proposed CPKC and CSXT transactions—delay that would come at the expense of shippers and the public.

Nor is the Board's acceptance of CN's Reply necessary to ensure a full record. It provides no new information, but like NS's Request, merely asks the Board to consolidate the CPKC and CSXT proceedings based on the unsupported assertion that consolidation would ensure that supplemental information is provided in order to assess possible adverse operational impacts. Like NS, CN willfully overlooks the fact that CPKC's Operating Plan—which estimates just two approximately 70-car trains daily to or from Jackson for at least the next five years as a result of both the CPKC and CSXT transactions—contains information demonstrating that there is no valid basis for concern.² And like NS, CN provides no reasonable explanation why consolidation is either procedurally appropriate or necessary.³ They ignore the fact that CPKC's proposed transaction builds upon, and is contingent on CSXT's transaction, and that both CPKC's and CSXT's Applications already provide information based on the combined impact of the two transactions.

Notably, CN does not oppose acceptance of CPKC's Application as a Minor Application which is the issue currently before the Board. Once the Board accepts the Minor Application and

² See Operating Plan at 8-9, 12.

³ As to CN's purported concerns about Amtrak, CN dispatches and controls the line in Jackson over which Amtrak operates and can prioritize and protect Amtrak movements over other traffic.

establishes a procedural schedule, CN will have the opportunity at the appropriate time to participate in the proceeding and to raise any purported concerns, should it so choose.

CONCLUSION

In the meantime, the Board should deny CN's Motion, disallow CN's Reply as untimely and as an unauthorized reply to a reply, proceed to accept the CPKC/MNBR Application as a Minor transaction, and establish a procedural schedule for parties to participate in the Board's review of that transaction.

Dated: November 1, 2023

Respectfully submitted,

/s/ David F. Rifkind

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*Counsel for Canadian Pacific Kansas City Limited and
The Kansas City Southern Railway
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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing CPKC Reply to CN's Motion for Leave to Reference Earlier Submitted Response/Reply in Docket No. FD 36732 to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ David F. Rifkind