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Office of Proceedings
November 3, 2023
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Expedited Consideration Requested

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36734

SOO LINE RAILROAD COMPANY a/k/a CPKC
PETITION FOR DECLARATORY ORDER

UNOPPOSED REQUEST FOR EXTENSION TO FILE A REPLY

Josh Kaul
Attorney General
17 West Main Street
Madison, Wisconsin 53707

Zachary B. Corrigan
Assistant Attorney General
17 West Main Street
Madison, Wisconsin 53707
(608) 266-1677
CorriganZB@doj.state.wi.us

Attorneys for State of Wisconsin

 GRANTED Office of Proceedings	DECISION ID NO.: <u>51941</u>
	DECIDED DATE: <u>11/6/2023</u>
	SERVED DATE: <u>11/6/2023</u>
	APPROVED: <u><i>Madair</i></u> Director
	☒ Extended to 1/10/2024

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The State of Wisconsin (the State), by and through its undersigned counsel, respectfully moves for additional time to file a reply to SOO Line Railroad Company a/k/a CPCKA's (CPCK) Petition for a Declaratory Order (Dkt. 36374) (Petition). The State requests that it be permitted to file a reply **on January 10, 2024**, on the following grounds:

- 1) CPCK filed its Petition on October 27, 2023.
- 2) Pursuant to 49 C.F.R. § 1104.7(b), requests for an extension must come ten days prior to the due date.
- 3) Pursuant to 49 C.F.R. §1104.13(a), the State's reply to the Petition would be due on November 16, 2023.
- 4) The State's request for an extension of the time to file its reply is timely, as it is filed on November 3, 2023.

5) Under 49 C.F.R. § 1104.7(b), the Surface Transportation Board (the Board) has discretion to extend the time-period for replies upon request and with good cause.

6) Good cause exists for the State's requested extension for several reason, as follows:

7) First, the parties through counsel conferred in an October 31, 2023 phone conversation and subsequent email. CPCK agrees to the extension of the deadline. CPCK will not be prejudiced by the delay.

8) Second, an extended deadline would allow the State and CPCK to explore whether they can reach a resolution to this matter without litigating the matter before the Board or a court. The State was unaware that CPCK believed that "the parties have been unable to resolve this dispute" (Pet. Declaratory Order at 12), after having only had one settlement conference on August 30, 2023, on the matter after it was referred to the Wisconsin Department of Justice. In fact, the State believed that this discussion was productive, and the result of the settlement conference was that CPCK was going to provide some analysis on some of the options to potentially resolve the case. The parties were in the process of scheduling a meeting for a discussion about these options when the Petition was filed. After the Petition's filing, the parties have now agreed to additional meetings to see if there is a potential way to resolve this without litigation. The extended deadline will allow the parties to continue to have such discussions, possibly relieving the Board from needing to decide the matter.

9) Third, an adequate response to the petition will take more than the 20 days typically allotted under the Board's rules. The Petition was extensive, covering 32 pages, along with its own engineer's declaration and 17 exhibits, and containing arguments that CPCK had not previously advanced in its prior discussions with the State. The State vigorously disputes CPCK's characterization of Wisconsin and federal law. The State's reply will need to correct many of the Petition's factual assertions with one or more declarations and exhibits. A fulsome reply would require the dedication of resources across several staff, supervisors, and attorneys from the Wisconsin Department of Natural Resources and Department of Justice, when these staff already have other pre-existing obligations and deadlines. An extended deadline would thus allow the Board to have a fulsome response from the State so the Board can best reach its decision.

10) Fourth, such a fulsome reply would require the dedication of resources around the Thanksgiving and late December and early January holidays, when staff already have scheduled vacations and other time off. Extending the deadline will afford the State the time it will need to accommodate conflicting obligations and schedules and present its response (if still necessary) early in the new year.

The State therefore respectfully requests that the Board extend the deadline for it to file a reply to the Petition and allow it to file it on **January 10, 2024**.

Dated this 3rd day of November, 2023.

JOSHUA L. KAUL
Attorney General of Wisconsin

/s/ Zachary B. Corrigan

ZACHARY B. CORRIGAN
Assistant Attorney General
State Bar #1116596

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-1677 (Corrigan)
(608) 294-2907 (Fax)
corriganzb@doj.state.wi.us

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2023, a copy of the foregoing was served via e-mail upon the following:

Charles W. Webster
Senior Counsel
CPKC
11306 Franklin Ave
Franklin Park, IL 60131
(630)860-4161
Charles.Webster@cpkcr.com

Michelle Sullivan
Legal Counsel – US
CPKC
120 S. Sixth Street #800
Minneapolis, MN 55402
(612) 594-4738
Michelle.Sullivan@cpkcr.com

David F. Rifkind
STINSON LLP
1775 Pennsylvania Avenue NW, Suite
800
Washington, DC 20006
(202) 785-9100
David.Rifkind@stinson.com

Andrew Davis
Joshua Poertner
STINSON LLP
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402
(612) 335-1466
Andrew.Davis@stinson.com
Joshua.Poertner@stinson.com

/s/ Zachary B. Corrigan
ZACHARY B. CORRIGAN
Assistant Attorney General
State Bar #1116596