

307517

ENTERED
Office of Proceedings
November 20, 2023
Part of
Public Record

November 20, 2023

Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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, Miss. and Choctaw and Marengo Counties, Ala.,*
Docket No. FD 36732

Dear Ms. Brown:

Illinois Central Railroad Company ("CN") supports the Motion to Redesignate the Highly Confidential Designation of Certain Materials ("Motion"), filed by Norfolk Southern ("NS") in this proceeding on November 8, 2023. Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company (together, "CPKC" or "Applicants") have over-designated significant portions of their Application as "Highly Confidential." As a result, critical information cannot be reviewed by CN's employees, and CN's ability to prepare comments and evidence in response to the Application has been inhibited.

Applicants project that their proposed transaction, together with the transaction proposed by CSX Transportation, Inc. ("CSXT") in Docket No. FD 36727, will add traffic to the Meridian Speedway, which runs through Jackson, Mississippi, where the traffic uses trackage rights over a portion of CN's main line. That CN line is part of CN's principal north-south line between Chicago and the Gulf Coast. It also carries two passenger trains a day in Amtrak's City of New Orleans service.

It is essential that CN be able to probe the basis for CPKC's traffic projections, so CN may assess the reliability of those projections and determine the extent to which transaction-related increases could impact CN's own freight traffic and Amtrak's passenger trains. To do so, CN's personnel need to be able to review information concerning the Applicants' traffic projections. They cannot effectively do so here, however, because CPKC has wrongly over-designated significant non-shipper-specific traffic information as "Highly Confidential."

CSXT initially designated non-shipper-specific traffic information as "Highly Confidential" in its application in Docket No. FD 36727. CN counsel separately asked CPKC and CSXT to redesignate such information as "Confidential." CSXT agreed to redesignate portions of its application, but CPKC rejected CN's request, just as it apparently rejected NS's request.

As NS's Motion demonstrates (at 5-7, 13-17), the non-shipper-specific traffic information in CPKC's application does not qualify for "Highly Confidential" treatment under the Protective Order or Board

precedent. Further, as NS explains, over-designation hinders “the ability of interested parties to review, assess, and present arguments to the Board for its consideration.” Motion at 6.

Respectfully submitted,

/s/ David A. Hirsh

David A. Hirsh

Counsel for Illinois Central Railroad Company

cc: All Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that I have, this 20th day of November, 2023, caused a copy of the foregoing letter of David A. Hirsh to Cynthia T. Brown to be served by email on all Parties of Record.

/s/ James M. Guinivan

James M. Guinivan