

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
November 27, 2023
Part of
Public Record

Finance Docket No. 36500 (Sub-No.6)

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)

PETITION TO MODIFY DATA REPORTING REQUIREMENTS

This Petition is submitted on behalf of the Coalition to Stop CPKC (“Coalition”)¹ pursuant to Decision Nos. 35, 36, and 37 in Docket No. FD 36500² for the purpose of requesting that the Board modify two aspects of the data CPKC is required to provide pursuant to Appendix B of Decision No. 35. Additional authority for this this Petition is found in 49 U.S.C. §11327. *See* Decision No. 35 at 77 (“The Board has authority to enter supplemental orders enforcing merger

¹ The Coalition members are the Village of Bensenville, Ill.; City of Wood Dale, Ill., Village of Roselle, Ill., Village of Schaumburg, Ill., Village of Hanover Park Ill., Village of Bartlett, Ill., City of Elgin, Ill., and DuPage County, Ill.

² *Canadian Pacific Railway Limited; Canadian Pacific Railway Company; Soo Line Railroad Company; Central Maine and 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* (served March 15, 2023) and Sub-docket Nos. 1-5 described in Footnote 1 thereto.

conditions and to modify prior decisions entered in the merger proceeding both during and after the merger oversight period”). This Petition is supported by the attached Verified Statement of Thomas D. Crowley and Robert Mulholland, President and Senior Vice President, respectively, of L.E. Peabody & Associates, Inc. (“Crowley/Mulholland VS”).

The requested modifications are necessary to ensure that the merged Canadian Pacific Kansas City railroad (“CPKC”)³ is providing data that enables the Coalition and other interested parties to effectively monitor the implementation of the merged railroad’s operating plan and the impacts of the merger on road crossing delays, blocked road crossings, and crossing safety. Because the Board’s conclusions in Decision No. 35 concerning such impacts (or the lack thereof) were expressly based on the analysis of the STB’s Office of Environmental Analysis (“OEA”) which established the baseline and projected future rail operations for CPKC, monitoring whether the Board’s conclusions prove correct during this oversight Sub-docket as the merger is implemented requires consistent data inputs to be utilized.⁴

I. Background

A. Interest of the Coalition

The Coalition’s primary mission is to protect the safety and well-being of the approximately 350,000 residents of the eight Coalition communities through which a critical segment of the merged railroad runs. That segment is the approximately 23-mile rail line extending

³ Decision No. 35 at 3.

⁴ By filing this Petition, the Coalition is seeking only that the data submitted by CPKC in this oversight proceeding be consistent with the data that was submitted to the Board in FD No. 36500 and utilized by OEA in order to ensure an “apples to apples” comparison of the Board’s baseline conclusions and the actual impacts that occur during this oversight phase. The Coalition in no way concedes that OEA’s analysis or conclusions as to the impact of the merger on crossing delays, train number and length, and train speeds were correct or accurate, or met the requirements of the National Environmental Policy Act, 42 U.S.C. §4321, *et seq*, the Administrative Procedure Act, 5 U.S.C. 706, and other federal laws.

westward from Tower B-17 at approximately Milepost 17 in the Village of Bensenville, to approximately Milepost 40.3 at Randall Road near the City of Elgin. The line is owned by The Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (“Metra”) and is part of its system denoted the Milwaukee District-West Line (“MD-W Line”).⁵ As explained and developed in the record for Docket No. FD 36500, CPKC utilizes the MD-W Line for freight train transportation to and from its Chicago Subdivision pursuant to a trackage rights arrangement that dates from 1985.⁶ CPKC designates the MD-W Line track as its Elgin Subdivision. There are no fewer than 31 road crossings located in the Coalition communities situated on the MD-W Line.⁷ All of the freight traffic of CPKC that runs between Canada and the United States pre-merger and will now run between Canada and Mexico post-merger, must run over either the MD-W Line or CPKC’s Marquette Subdivision located west of Chicago.

The Coalition was an active participant in Docket No. FD 36500.⁸ It objected to the proposed merger on various grounds that questioned the veracity of the Applicants’ representations concerning the merged railroad’s operating plans in the Chicago area. These representations included statements by the Applicants about the number of CPKC freight trains that would traverse the Coalition line post-merger, the length of the trains, and the degree to which CPKC’s freight trains post-merger would increase current road crossing delays caused by CPKC’s freight trains, to the further detriment of community residents, particularly first responders and law enforcement personnel.

⁵ Decision No. 35 at 108.

⁶ *Id.*

⁷ A list of the crossings is included in the Crowley/Mulholland VS at page 3.

⁸ The Coalition also submitted filings in Docket No. FD 36500 (Sub-Nos. 1-4), which concerned the Responsive Application filed by the Canadian National Railway.

In Decision No. 35 the Board declined to grant any of the relief requested by the Coalition, based in part on the Board's acceptance of CPKC's representations in their Application and related filings,⁹ but also in part on the conclusions of OEA in the Final Environmental Impact Statement ("EIS") for the merger as to the projected number and average length of trains that would be transported over the MD-W Line post-merger, the speeds at which they would move, and their impact on grade crossing delays.¹⁰

To its great credit, however, the Board coupled its conditional approval of the merger with the establishment of this oversight Sub-docket to monitor the implementation of the merger and to potentially modify the Board's conclusions in Decision No. 35 if the actual implementation of the merger proved to be contrary to the assumptions on which approval had been based. Among the non-inclusive list of issues that will be monitored over the next seven years are "possible delays and service disruptions impacting Chicago-area lines and commuter rail service provided by Metra."¹¹

⁹ Decision No. 35 at 115 ("Thus, the Board agrees with Applicants' projection that the Transaction will add eight freight trains to the western segment of MD-W.").

¹⁰ See Decision No. 35 at 4 ("Here, having considered the Final EIS and the Safety Integration Plan (SIP) Applicants will be following, the Board concludes that this merger will not increase safety risks in any meaningful way beyond whatever level of risk exists from the current daily moves of trains through the communities served by CP and KCS"); See, *Id.* at 163 ("Moreover, the analysis in the Final EIS shows that the Transaction will result in only minor adverse impacts on grade crossing delay."); and *Id.* at 165 ("Further, because Applicants expect average train length to decrease at many grade crossings as a result of the Transaction, the average amount of time that an emergency vehicle will have to wait for a train to pass will decrease at most grade crossings in the study area. [Final EIS at 3.3-12]")

¹¹ *Id.* at 12; see also *id.* at 115 ("[h]owever, if the increase in traffic on the western segment of MD-W proves to be more than Applicants predict and Metra suffers operational disruptions as a result, the Board can exercise its authority to take additional action to remediate Transaction related harms.").

B. The Implementation of Appendix B

In Appendix B of Decision No. 35 the Board set out a number of data reporting requirements for the Chicago area. Relevant to this Petition, this data includes “Weekly CPKC 25th percentile, median, 75th percentile, and maximum train length” and “Weekly CPKC average transit time and weekly maximum transit time.”¹²

Prior to CPKC commencing the required data reporting, the Board directed representatives of CPKC to “participate in a technical conference with Board staff and guidance will be developed regarding the Board’s requirements for both recordkeeping and reporting of any data, including scope, methodology, and formatting.”¹³ The Board also stated that “[f]ollowing the technical conference, the Board will issue a subsequent order as necessary providing further details on these issues.”¹⁴ The Board declined to allow parties other than the Applicants to participate in the technical conference, which was held on May 8, 2023 and was led by the Board’s Director of the Office of Economics. However, prior to the conference, the Board served Decision No. 36 in Docket No. 36500, which stated in part:

While the technical conference will not be open to third-party participants, it will be transcribed. The transcript will be added to the public record, redacted as appropriate under the protective order in this case, which will ensure that Metra, BNSF, and any other interested parties are informed as to what transpired at the technical conference. In addition, following the technical conference, further details relating to reporting requirements and procedures will be provided as necessary in a Board order as stated by the Board in Decision No. 35. *Interested parties will thus have the opportunity to review the order and may communicate their views on how the data reporting formats and procedures might be improved.*¹⁵

¹² *Id.*, Appendix B, at 199.

¹³ Decision No. 35 at 11-12.

¹⁴ *See Id.* at 144.

¹⁵ Decision No. 36 (served May 1, 2023) at 2 (emphasis added). *See also* Applicants Reply to Metra Letter of April 4 and the Coalition to Stop CPKC’s April 6 Reply, filed April 24, 2023 at 8 (“First, as the Board has explained, it will memorialize the specifics of CPKC’s reporting obligations in a subsequent order (the “Reporting Order”). Decision No. 35 at 144. Metra (along

On July 27, 2023, the Board published in the public record certain data “templates” in Docket No. FD 36500 developed during the technical conference. After reviewing the templates, the Coalition submitted the letter attached hereto as Exhibit 1 to the Acting Director of the Office of Economics (with a copy to outside counsel for CPKC) asking certain questions about the templates and the data that would be produced according to them. These questions included (1) how average transit time would be calculated, (2) clarification on the trains per day reporting and, significantly for purposes of this Petition, (3):

[w]ill the data on train length reported by CPKC either include or enable interested parties to calculate “average train length” per day? This is the metric upon which the STB’s Office of Environmental Analysis based its conclusion that “The shorter [average] train lengths under the Proposed Acquisition would reduce the average delay per train crossing and also reduce the likelihood of a train blocking both the primary and alternate crossing locations compared to the No-Action Alternative.” See Final EIS, Volume I, page 3.3-8.

In an August 9, 2023 reply (Exhibit 2) the Acting Director deferred answering these questions, citing Decision No. 36 and reiterating that “interested parties will have an ‘opportunity to review the order and may communicate their views on how the data reporting formats and procedures might be improved.’” CPKC did not respond to the Coalition’s letter.

On September 1, 2023, the Board served the promised decision on post-merger data reporting (Decision No. 1 in this Sub-docket) that expanded on its discussion in Decision No. 35 and instructed parties who wished to participate in this Sub-docket to file a notice of intent to participate. Notwithstanding the statements referenced above, Decision No. 1 was silent how and when participating parties could communicate their views on the data and how the reporting

with other third parties) will have ample opportunity to review that order and point out ways in which they think that the data reporting formats or procedures ordered by the Board might be improved.”).

requirements might be improved. Nevertheless, on the same date, the Board served Decision No. 37 in Docket No. 36500 addressing certain issues raised by Metra and other parties concerning data reporting pursuant to Appendix B, and which reiterated that “the Board retains the ability to take ‘additional action’ —which could include imposing more granular reporting requirements— if necessary and appropriate to address issues that materialize post-merger.”¹⁶

The Coalition is submitting this petition based on the Board’s prior statements inviting parties to communicate their views on the data reporting requirements and procedures, as well as the Board’s acknowledgement that it retains the ability to take remedial action that includes more granular reporting requirements if necessary and appropriate to address issues that materialize post-merger. For the reasons set forth below, the Board should modify the data it has directed CPKC to report each month at least for the Chicago, Illinois area, and direct CPKC to take other actions described below.

II. Requested Modifications

The Coalition has reviewed the data submitted by CPKC on October 15, 2023, and November 15, 2023, purportedly in compliance with Appendix B, and it notes the following two deficiencies that must be corrected in order to enable the Coalition communities and other parties to adequately monitor the impacts of the merger as it is implemented over the oversight period.

A. CPKC Should Report “Average Train Length” for Through Freight Trains

The Coalition requests the Board to modestly expand the data CPKC is required to produce in Appendix B to include (1) the average length of CP through freight trains traversing over the

¹⁶ Decision No. 37 at 5, *citing* Decision No. 35 at 120.

MD-W line between Randall Road and Tower B-17 for all weeks from April 2018 to April 2023; (2) the average through freight train length data for CPKC trains for all weeks from April 2023 to November 15, 2023, and (3) the same data going forward in CPKC's monthly submissions. The reason for this request is that, as stated above, the Board's approval of the merger was based in part on conclusions it drew from analyses conducted by OEA that used data the Applicants provided on "average train length" as a critical input purportedly to assess the potential impacts of the merger on crossing delays, crash frequency, and blocked crossings.¹⁷ As such "average train length" was a key underpinning of the Board's conclusion that "the Transaction will result in only minor adverse impacts on grade crossing delay."¹⁸ It logically follows that in order to accurately measure "if the increase in traffic on the western segment of MD-W proves to be more than Applicants predict" and whether adverse crossing delay impacts will actually be minor, average train length data must be provided and monitored post-merger.

Indeed, in apparent recognition of the value of an "apples to apples" approach for monitoring the implementation of their merger, in Applicants' Final Brief they offered to commit to providing "average train length of CPKC trains" data for the entire MD-W line and other lines in Chicago during an oversight period.¹⁹ The Board instead required CPKC provide weekly train length data for the 25th, median, 75th, and maximum train length, without explanation. However, as Mssrs. Crowley and Mulholland explain, it is not possible to calculate the average through freight train length of CPKC trains from the data submitted by CPKC pursuant to Appendix B.²⁰

¹⁷ The Final EIS is replete with references to average train length. *See, e.g.* Final EIS Tables H.1-1., H.2-2., and H.2-4; Final EIS Volume I at pages S-13, 3.2-2, 3.3-1, 3.3-8, 3.3-12, 3.3-26; and Volume II at H-3, H-331, H-332.

¹⁸ Footnote 10, *supra*.

¹⁹ Applicants' Final Brief, Appendix A at page A2. Crowley/Mulholland VS at 6.

²⁰ Crowley/Mulholland VS at 8-9, Table 2.

This means that the Coalition and other interested parties will not be able to accurately assess, on an “apples to apples” basis, either the Final EIS’s assumptions regarding average train length or the adverse impacts from road crossing delays caused by deviations between the assumed and actual future average train lengths as the merger is implemented. Fortunately, the train event data CPKC uses to compile this reported train length data can be used to simply calculate average train length.²¹ Also, CPKC was ready and willing to submit average train length data on the MD-W Line as part of the oversight process. The Coalition therefore respectfully requests that the Board modify Appendix B to require CPKC to report average train length as described above.

B. CPKC Should Report “Average Train Speed” (Or Supply Corrected and Validated Milepost Data)

The Final EIS analysis similarly relied upon “average train speed” to evaluate the potential impacts of the merger on vehicle delay and the related items discussed above.²² The train speed information utilized by the Final EIS was based on assumptions OEA made after reviewing the train speed limit information contained in operating timetables and related materials supplied to the Board by CP and KCS during the application phase. For the oversight phase, however, CPKC has been directed to submit only “weekly CPKC average transit time and weekly maximum transit time.” CPKC has reported this data by segment in its first and second data productions. While it is possible to develop average train speeds from average transit times if the mileposts are known, CPKC’s narrative description of its first set of transit time data identifies mileposts that produce questionable implicit train speeds for certain time periods for both its October and November submissions. Specifically, CPKC stated that the transit times it reported for this segment

²¹ Crowley/Mulholland VS at 10-11.

²² See e.g, Final EIS Volume I at pages 3.3-6, 3.3-26, Volume II at page H-3, H-331, H-332.

correspond with, “the time difference between Tower 35 (CP Elgin Subdivision MP 35.1) and Randall Road (CP Elgin Subdivision MP 40.3) ... for the time period since January 1, 2021.”²³ However, based on the provided transit time data, the identified endpoints appear to be incorrect. This apparent error was not corrected in the November data submission.

The Board should direct CPKC to revisit its description and clarify that the transit times for the period starting on January 1, 2021 are associated with the time between train events at Milepost 35.1 and Milepost 17.0, or, if that is not the case, to otherwise correct the milepost information included in its October 15, 2023 narrative.²⁴ CPKC should also be directed to correct or confirm the precise milepost location for Tower B-17 that should be used by the Coalition and other stakeholders to calculate average speed.²⁵

III. Conclusion

The Coalition communities appreciate the creation of this oversight Sub-docket and they intend to actively participate in it with the aim of protecting the health and safety of the residents and the viability of the businesses that reside within their boundaries. Effective and accurate monitoring of the CPKC merger implementation requires data that enables parties to accurately measure the incremental impact of the merged railroad’s plans to increase the number and size of

²³ Crowley/Mulholland VS at 11; discussing the explanatory notes accompanying CPKC’s October 15, 2023 data production at page 25.

²⁴ Crowley/Mulholland VS at 11.

²⁵ *Id.*

freight trains that will traverse the MD-W Line. Modifying Appendix B as requested herein is necessary to achieve that desired result.

Respectfully submitted,

/ss/ Thomas W. Wilcox

Thomas W. Wilcox

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Attorney for the Coalition to Stop CPKC

November 27, 2023

EXHIBIT 1



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August 1, 2023

VIA EMAIL

Mr. Francis O'Connor
Acting Director, Office of Economics
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 Mr. O'Connor:

On July 27, 2023, the Office of Economics posted in the referenced docket a cover memorandum and several “preliminary electronic template files” (“templates”) to be used by the merged CPKC to submit information and data in compliance with Appendix B of the March 15, 2023, Decision approving the merger. The Coalition to Stop CPKC and its consultants have reviewed these materials and have the following questions:

1. Please confirm that the document titled "306897 Spreadsheet 2 of 4.xlsx" is the “attached preliminary data dictionary” referenced in the first paragraph of the cover memorandum. What is the expected timeline for producing a final data dictionary?

2. Will you please provide a description of the specific events captured by the “transit time” data that would be provided via the templates? Using an example from Chicago, Illinois: for eastbound trains coming from CPKC’s tracks west of Elgin, Illinois, does the transit time to be reported reflect when the head end of a train reaches Bensenville Yard or when the tail end of a train clears into the yard?

2. Will the “trains_per_day_count” data be provided such that the maximum number of trains per day can be ascertained in addition to the average number of trains per day? And will the data reflect which direction the trains are going?

3. Will the data on train length reported by CPKC either include or enable interested

Letter to Francis O'Connor
August 1, 2023
Page 2

parties to calculate “average train length” per day? This is the metric upon which the STB’s Office of Environmental Analysis based its conclusion that “The shorter [average] train lengths under the Proposed Acquisition would reduce the average delay per train crossing and also reduce the likelihood of a train blocking both the primary and alternate crossing locations compared to the No-Action Alternative.” *See* Final EIS, Volume I, page 3.3-8.

4. Finally, will you please clarify whether the “trains_over_10000_feet” data will be a weekly total of such trains or whether CPKC will report the number of trains over that length per day, weekly?

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

Respectfully submitted,



Attorney for the Coalition to Stop CPKC

Cc: David L. Meyer, Esquire

EXHIBIT 2

From: [O'Connor, Francis](#)
To: [Tom Wilcox](#)
Cc: [David L. Meyer](#)
Subject: RE: Letter In Response to Templates
Date: Wednesday, August 9, 2023 9:53:18 AM

Mr. Wilcox,

In response to the first question of your letter, the document originally posted to the docket as "306897 Spreadsheet 2 of 4.xlsx" is the "preliminary data dictionary" referenced in the cover memorandum attaching the templates. For clarity, that document has since been renamed "306897 STB_FD_36500_Data_Dictionary.xlsx."

Regarding the rest of your letter, the Board's May 1 decision in this proceeding explained that, following the May 8 technical conference between CPKC and Board staff, "further details relating to reporting requirements and procedures will be provided as necessary in a Board order" and interested parties will have an "opportunity to review the order and may communicate their views on how the data reporting formats and procedures might be improved."

Best regards,

Frank

From: Tom Wilcox <tom@twilcoxlaw.com>
Sent: Tuesday, August 1, 2023 2:17 PM
To: O'Connor, Francis <francis.o'connor@stb.gov>
Cc: David L. Meyer <david@meyerlawdc.com>
Subject: Letter In Response to Templates

Dear Mr. O'Connor – Attached is a letter to you and the Office of Economics submitted on behalf of the Coalition to Stop CPKC in response to the "template" information posted on the Board's website last week in Docket No. FD 36500. Please feel free to call or email me with any questions.

Regards,
Tom Wilcox

Thomas W. Wilcox

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500 (Sub-No. 6)

**CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC
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- CONTROL -

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

Verified Statement

of

Thomas D. Crowley
President

and

Robert D. Mulholland
Senior Vice President

L. E. PEABODY & ASSOCIATES, INC.
ECONOMIC CONSULTANTS

On Behalf Of

THE COALITION TO STOP CPKC

Dated: November 27, 2023

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LIST OF EXHIBITS

Exhibit No.	Exhibit Description
(1)	(2)
1	Statement of Qualifications of Thomas D. Crowley
2	Statement of Qualifications of Robert D. Mulholland
3	Summary of CPKC Initial Data Production – Average of Weekly Report Data and Comparison to Data Inputs Used by OEA in Models Used to Develop EIS Tables which Quantify Projected Increases in At-Grade Crossing Delay

I. INTRODUCTION AND SUMMARY OF FINDINGS

We are Thomas D. Crowley and Robert D. Mulholland, President and a Senior Vice President, respectively, of L. E. Peabody & Associates, Inc. L. E. Peabody & Associates, Inc. is a consulting firm that specializes in addressing economic, transportation, marketing, financial, accounting and fuel supply matters. We have spent most of our consulting careers of over 50 and 25 years, respectively, evaluating railroad operations, capacity, costs and profitability and pricing issues for shippers, producers, railroads and government agencies. Our credentials are included as Exhibit No. 1 and Exhibit No. 2 to this Verified Statement (“VS”).

The Surface Transportation Board (“STB” or “Board”) justified its approval of the CPKC merger, in part, based on the Final Environmental Impact Statement (“Final EIS”) compiled by the Office of Environmental Analysis (“OEA”).¹

Counsel for The Coalition to Stop CPKC (“The Coalition”) asked us to evaluate the compatibility between: (1) the railroad operating data upon which the OEA relied to project and quantify incremental crossing delay attributable to the merger in the Final EIS; and (2) the railroad operating data that CPKC is required to report during the merger oversight period in accordance with Appendix B to Decision No. 35 in this proceeding.²

Based on our review of the data included in the two (2) data sets, which are summarized in detail in the remainder of this VS, we found that the two (2) data sets are incompatible. Specifically, key inputs to the OEA delay models include: (1) average train length; and (2) average

¹ See, STB Docket No. FD 36500, *Final Environmental Impact Statement*, issued January 27, 2023.

² See, STB Docket No. FD 36500, *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*, Decision No. 35, Appendix B, decided March 14, 2023 (“Appendix B”).

train speed. Neither of these two (2) data items is required to be reported by CPKC going forward. While it is possible to develop average train speed from the Appendix B data (with clarification as discussed below), average train length cannot be developed from the Appendix B data. As a result, it is not possible for parties affected by the merger to accurately assess the incremental impact on crossing delays and related issues from CPKC's actual post-merger operations using the OEA's or other crossing delay models.

The Board needs to expand the Appendix B reporting requirements to include average train length data for through freight trains traversing the CPKC. Additionally, the Board should require CPKC to clarify the milepost data it provided in support of its initial October 15, 2023 and November 15, 2023 transit time data submission.

II. CROSSING DELAY

There are 31 at-grade crossings in the Coalition communities, as shown in Table 1 below.

Table 1
Coalition At-Grade Railroad Crossings

County	City	Street	Crossing ID	Milepost 1/
(1)	(2)	(3)	(4)	(5)
1. Kane	Elgin	Highland Ave.	372253J	42.94
2. Kane	Elgin	McLean BLVD N	372246Y	39.15
3. Kane	Elgin	Kimball St.	372242W	37.02
4. Kane	Elgin	Highland Ave WB	372241P	36.69
5. Kane	Elgin	W. Chicago St	372240H	36.63
6. Kane	Elgin	National St.	372239N	35.91
7. Kane	Elgin	Raymond St.	372235L	35.01
8. Kane	Elgin	Elgin Avenue	372231J	35 1/
9. Kane	Elgin	IL Rte 25 (St. Charles St)	372217N	34.72
10. Cook	Elgin	Gifford Rd.	372214T	33.47
11. Cook	Bartlett	Spaulding Rd.	372212E	32.67
12. Cook	Bartlett	Naperville Rd.	372210R	31.87
13. Cook	Bartlett	S. Western Ave	372207H	30.26
14. Cook	Bartlett	S. Oak Ave	372206B	30.09
15. DuPage	Bartlett	Prospect Ave	371997M	29.49
16. Cook	Schaumburg	Rodenburg Rd	372202Y	26.17
17. DuPage	Roselle	Roselle Rd	372196X	24.59
18. DuPage	Roselle	Prospect St.	372195R	24.46
19. DuPage	Roselle	Park St.	372194J	24.37
20. DuPage	Medinah	Medinah Rd.	372191N	23.06
21. DuPage	Itasca	Rohlwing Road	372184D	22 1/
22. DuPage	Itasca	Catalpa Ave	372182P	21.37
23. DuPage	Itasca	Walnut St	372180B	21.02
24. DuPage	Itasca	Prospect Ave	372179G	20.25
25. DuPage	Wood Dale	Wood Dale Rd	372178A	19.17
26. DuPage	Wood Dale	IL Rte 19 (Irving Park Rd)	372177T	19.08
27. DuPage	Wood Dale	Ash Ave.	372176L	18.48
28. DuPage	Bensenville	N. Church Rd	372174X	17.58
29. DuPage	Bensenville	Addison St	372172J	17.23
30. DuPage	Bensenville	N. Center St.	372171C	17.16
31. DuPage	Bensenville	York Rd.	372170V	17.08

1/ Approximate location.

In its filings in Docket No. FD 36500, the Coalition raised concerns regarding projected negative impacts caused by merger-related increases in the frequency and duration of vehicle delays³ due to blocked at-grade crossings in their communities.⁴

The Final EIS concluded that modeling conducted by OEA demonstrated the impact of the merger on the Coalition communities will be minimal, in large part due to an assumption that CPKC through freight train length would decrease over the Milwaukee District West Line (“MD-W Line”) which is the Metra-owned CPKC rail line⁵ that traverses Coalition communities:

For some grade crossings, average delay would decrease under the Proposed Acquisition relative to the No-Action Alternative because of projected changes in train length. Specifically, the Applicants expect that Proposed Acquisition would allow train lengths to become shorter on some rail line segments, which would reduce the average time that a passing train would block a crossing.⁶

The results of OEA’s analyses are summarized in the Final EIS Tables H.1-1., H.2-2., and H.2-4. Because the Board adopted the Final EIS’s conclusions in this regard, it establishes the baseline for monitoring and assessing future impacts on road crossing delays. The Coalition intends to use OEA’s tables and underlying models as one means to track and monitor the impact of the merger on road crossing delays going forward.⁷ Therefore, the Coalition requested that we assess whether the data in the record is sufficient for that purpose. We conclude that critical data

³ Including delays to emergency response vehicles.

⁴ See, e.g. Opening Comments and Request for Conditions of the Coalition to Stop CPKC, filed February 28, 2022, at 5, 9, 20, 21, and Verified Statement of Gary V. Hunter.

⁵ The Elgin Subdivision makes up most of what Metra refers to as the Milwaukee District-West (“MD-W”) line. Metra owns the rail line and CPKC dispatches it.

⁶ See, Final EIS, p. 3.3-6. For the MD-W line segment specifically, OEA assumed average through freight train length would decrease from 8,597.1 feet in the No-Action scenario to 6,817.2 in the Proposed Action Scenario. This is a decrease of 1,779.9 feet per train, or an assumed 21% reduction in post-merger average through freight train length.

⁷ We note that the Coalition’s use of the OEA model and EIS tables would be for convenience and a logical means to approach the oversight process. However, we understand that the Coalition does not concede OEA’s analysis was correct or that its conclusions were supported by adequate evidence. We also note that there are some technical errors that will need to be addressed when the model is updated to include actual data.

is absent from CPKC's required reporting. However, CPKC has indicated that the needed data is already being compiled by CPKC in its newly-established data collection and reporting procedures:

For each through train identified as traversing the segment during the Reporting Week, CPKC determined the train's length using the figures reported in the CPKC/CP Train Event data. Where the recorded length of a particular train varied across the segment, CPKC used the highest figure.⁸

Therefore, calculating and including average through train length in CPKC's monthly data productions would not be burdensome.

A. OEA DELAY MODEL INPUTS

The OEA model calculates vehicle delay at road crossings under different railroad operating scenarios. The railroad operating statistics that are critical inputs to the development of vehicle delay (output) statistics include:

1. Average speed of passenger and through freight trains;
2. Number of passenger and through freight trains per day; and
3. Average length of passenger and through freight trains per day.

Specifically, "OEA calculated estimated delay time using the industry standard equations set forth in **Appendix H**, which include the following variables: AADT, train speed, train length, number of trains per day, number of railroad tracks, and number of roadway lanes."⁹

In the OEA model, if the number of trains or the average length of trains increases over time, gate down time will increase, and vehicle delay will also increase, holding all else constant. Similarly, if the average speed of trains decreases over time, gate down time and vehicle delay will increase. OEA's ultimate conclusion that the impact of the merger on vehicle delay would be

⁸ See, Explanatory notes accompanying CPKC's October 15, 2023 data production at page 25.

⁹ See, Final EIS, January 2023, p. 3.3-2, emphasis in original. AADT, the number of railroad tracks, and the number of roadway lanes are publicly available.

minimal to the Coalition communities was dependent on its assumption that the increase in the number of through freight trains would be substantially offset by a concurrent decrease in through freight train length:

If the Board were to authorize the Proposed Acquisition, the Applicants expect that rail traffic would increase and average train lengths would decrease on certain rail line segments along the combined CPKC network. Increases in rail traffic would increase the total amount of time during the day that some grade crossings would be closed to vehicle traffic, which would cause delay for drivers. However, reductions in train lengths would reduce the average time a grade crossing would be blocked by each passing train.¹⁰

Consequently, to monitor whether crossing delays increase or decrease as the merger is being implemented requires “average train length” data.

B. CPKC COMMITMENT TO REPORT AVERAGE TRAIN LENGTH DATA

CPKC committed to reporting average train length data in Appendix A to its final brief:

8. As set forth in Rider 1, Attachment 1.1, CPKC will report monthly during an oversight period of up to five years on operational metrics relating to operations on Metra’s MD-W and MD-N lines, as well as CPKC’s operations on its Marquette Subdivision, as follows:

- MD-W Line Between Randall Road and Tower B-17 (for CPKC Trains to/from Chicago Subdivision):
 - o CPKC average daily train counts
 - o Average train length of CPKC trains
 - o Average transit time of CPKC trains (for through trains)¹¹

¹⁰ See, Final EIS, p. 3.3-1.

¹¹ See, Applicants’ October 21, 2022 Final Brief in Docket No. FD 36500, at Appendix A, “Applicants’ Commitments,” “Commitments Regarding Chicago-Area Lines and Metra,” page A-1.

C. STB-REQUIRED CPKC OPERATING DATA REPORTING

The STB imposed reporting requirements on CPKC to allow for performance monitoring relative to expectations of, and projections made, by CPKC and the STB. For reasons that were not stated in the decision approving the merger or otherwise publicly disclosed, the STB removed the average train length statistic CPKC committed to publish from the Exhibit B reporting requirements and replaced it with alternate train length statistics. The final reporting requirements were memorialized following the May 8, 2023 technical meeting held between STB and CPKC staff.

Exhibit No. 3 to this VS contains a summary of the railroad operating statistics CPKC reported for the five-year historical “look back” period through September 2023 in accordance with Appendix B reporting requirements. Specifically,

1. Average transit time of through freight trains;¹²
2. Maximum transit time of through freight trains;¹³
3. Number of through freight trains per day (directional);¹⁴
4. Length of 25th percentile through freight train;¹⁵
5. Length of 50th percentile (median) through freight train;¹⁶
6. Length of 75th percentile through freight train;¹⁷
7. Length of 100th percentile (longest) through freight train;¹⁸ and
8. Count of through freight trains over 10,000 feet.¹⁹

In its notes accompanying its October 15, 2023 data production, CPKC disclosed its methods of reporting items 4 through 8 above as follows:

CPKC reported the length of the longest train during the Reporting Week.
CPKC reported the number of trains with a length in excess of 10,000 feet.

¹² See, Exhibit No. 3, Line 4, Columns (4) through (11).
¹³ See, Exhibit No. 3, Line 5, Columns (4) through (11).
¹⁴ See, Exhibit No. 3, Lines 6 and 7, Columns (4) through (11).
¹⁵ See, Exhibit No. 3, Line 8, Columns (4) through (11).
¹⁶ See, Exhibit No. 3, Line 9, Columns (4) through (11).
¹⁷ See, Exhibit No. 3, Line 10, Columns (4) through (11).
¹⁸ See, Exhibit No. 3, Lines 11, Columns (4) through (11).
¹⁹ See, Exhibit No. 3, Lines 12, Columns (4) through (11).

CPKC calculated the percentile lengths by ranking all trains by length, identifying the train with the shortest length for which the specified percentage of trains (25%, 50%, or 75%) had shorter lengths, and then reported the length of that train.²⁰

Table 2 below demonstrates that the Appendix B reporting requirements do not allow interested parties to determine average train length from the data CPKC is required to report. Specifically, Table 2 contains two (2) hypothetical groups of 21 weekly trains with identical 25th, 50th, 75th, and 100th percentile train lengths, but different average train lengths.

²⁰ See, Explanatory notes accompanying CPKC's October 15, 2023 data production at page 25.

Table 2
Disconnect between Average and Percentiles

Percentile	Example 1	Example 2	Difference 1/
(1)	(2)	(3)	(4)
A. Weekly Through Freight Trains Arrayed by Length			
1. 4.8%	5,000	3,500	(1,500)
2. 9.5%	5,100	3,650	(1,450)
3. 14.3%	5,200	3,800	(1,400)
4. 19.0%	5,300	3,950	(1,350)
5. 23.8%	5,400	4,100	(1,300)
6. 28.6%	5,500	5,500	0
7. 33.3%	6,100	5,650	(450)
8. 38.1%	6,200	5,800	(400)
9. 42.9%	6,300	5,950	(350)
10. 47.6%	6,400	6,100	(300)
11. 52.4%	6,500	6,500	0
12. 57.1%	7,600	6,650	(950)
13. 61.9%	7,700	6,800	(900)
14. 66.7%	7,800	6,950	(850)
15. 71.4%	7,900	7,100	(800)
16. 76.2%	8,000	8,000	0
17. 81.0%	10,600	8,150	(2,450)
18. 85.7%	10,700	8,300	(2,400)
19. 90.5%	10,800	8,450	(2,350)
20. 95.2%	10,900	8,600	(2,300)
21. 100.0%	11,000	11,000	0
B. Trains Reported by CPKC per Appendix B			
22. 25%	5,500	5,500	0
23. 50%	6,500	6,500	0
24. 75%	8,000	8,000	0
25. 100%	11,000	11,000	0
C. Average Train Length (Not Reported) 2/			
26. xxx	7,429	6,405	(1,024)

1/ Column (3) - Column (2).

2/ Average of Lines 1 through 21.

As shown on Table 2, Line 26 above, the average train length for the hypothetical train roster in Column (2) is more than 1,000 feet greater than the average train length for the hypothetical train roster in Column (3), despite the fact that the train lengths required to be reported are identical for the two (2) hypothetical train groups (shown on Lines 22 through 25). There is

no way to ascertain the length of the unreported trains, so there is no way to reliably estimate the average train length using reported data.

D. SUPPLEMENTAL DATA REQUIRED

Under the following topical headings, we discuss the supplemental data and information required to accurately assess the changes to the baseline and future levels the STB relied upon (in part) in its Decision to approve the CPKC merger:

1. Average Through Freight Train Length Data
2. Corrected Milepost Data

1. Average Through Freight Train Length Data

Although average train length was a critical component of the OEA's determination of crossing delays pre- and post-merger the STB elected not to require CPKC to report the average train length statistic in Exhibit B. But as demonstrated above there is no way to calculate average through freight train length data²¹ using the train length data CPKC is required to report, which includes only 25th percentile train length, 50th percentile (median) train length, 75th percentile train length, and 100th percentile (maximum) train length.²²

The STB should require CPKC to supplement its reporting to include average through freight train length data for all reporting periods. Expanding CPKC's reporting requirements will not require CPKC to conduct additional data collection because the missing statistic can be developed from the same universe of train data CPKC has already compiled in order to identify the 25th, 50th, 75th, and 100th percentile train lengths for all reporting periods. CPKC would just

²¹ See, Exhibit No. 3, Line 3, Columns (2) and (3).

²² See, Exhibit No. 3, Lines 8 through 11, Columns (4) through (11).

have to calculate the simple average of all observations it used to identify the train lengths that it is already required to report.²³

2. Corrected Milepost Data

While the Final EIS relied upon “average train speed” for its conclusions about the baseline and future level of delays,²⁴ Exhibit B requires CPKC to only report “average transit times”²⁵ and “maximum transit times.” Transit times can be used to develop average train speeds if the mileposts are known and are provided in conjunction with the transit time data. However, CPKC’s narrative description of its first set of transit time data submitted on October 15, 2023 identifies mileposts that produce questionable and inconsistent implicit train speeds over time.²⁶ This appears to be the result of a misstatement. Specifically, CPKC indicated that reported transit times represented “the time difference between Tower 35 (CP Elgin Subdivision MP 35.1) and Randall Road (CP Elgin Subdivision MP 40.3) ... for the time period since January 1, 2021.”²⁷ We believe CPKC meant to state that the mileposts associated with its published 2021-2023 transit times on this segment are MP 35.1 and MP 17.0.²⁸ The STB should require CPKC to correct (or confirm) its reported milepost data.²⁹

²³ We also note that the STB assumed a “No Action” average through freight train length of 8,597.1 feet. See, Exhibit No. 3, Line 3, Column (2). Based on its historical data production (which covers the 5-year look back period from April 14, 2018 through April 14, 2023) the closest reported operating statistic is the 75th percentile through freight train length of 8,611.5 feet for the period from January 1 through April 14, 2023. See, Exhibit No. 3, Line 10, Column (9). The median train length for that same time period 7,414.1 feet. See, Exhibit No. 3, Line 9, Column (9).

²⁴ See, Exhibit No. 3, Line 1.

²⁵ See, Exhibit No. 3, Line 4.

²⁶ See, Exhibit No. 3, Lines 13 through 16, Columns (7) through (11).

²⁷ See, Explanatory notes accompanying CPKC’s October 15, 2023 data production at page 25. The notes also indicate that the reported transit times for the time periods before January 1, 2021 correspond to “the time difference between recorded train events at Randall Road [MP 40.3] and Tower B-17.” These endpoints appear to be valid for the pre-2021 transit time data reported by CPKC.

²⁸ See, Exhibit No. 3, Lines 17 through 20, Columns (7) through (11).

²⁹ It is worth noting that the implicit train speeds reported by CPKC are off by an order of magnitude from the assumptions in the OEA analysis. Compare Exhibit No. 3, Line 1 (40 MPH assumed speed) with Exhibit No. 3, Line 20 (roughly 20 MPH reported implicit speed).

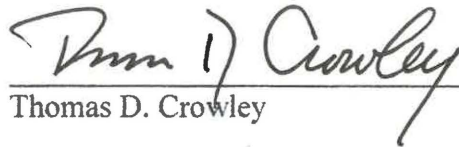
E. CONCLUSION

For the reasons stated in the preceding sections of this VS, the Board should require CPKC to supplement its historical and future data reporting activities to include average through freight train length in addition to the 25th, 50th, 75th, and 100th percentile train length data it already reports.

The STB should also direct CPKC to correct and/or clarify the milepost data it included in its narrative description accompanying its October data production at page 25.

VERIFICATIONS

I, Thomas D. Crowley, verify under penalty of perjury that I have read this Verified Statement on behalf of the Coalition to Stop CPKC, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.


Thomas D. Crowley

Executed on 11/27/23

* * *

I, Robert D. Mulholland, verify under penalty of perjury that I have read this Verified Statement on behalf of the Coalition to Stop CPKC, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.


Robert D. Mulholland

Executed on 11/27/2023

LIST OF EXHIBITS

Exhibit No.	Exhibit Description
(1)	(2)
1	Statement of Qualifications of Thomas D. Crowley
2	Statement of Qualifications of Robert D. Mulholland
3	Summary of CPKC Initial Data Production – Average of Weekly Report Data and Comparison to Data Inputs Used by OEA in Models Used to Develop EIS Tables which Quantify Projected Increases in At-Grade Crossing Delay

THOMAS D. CROWLEY
STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737, and 7 Horicon Avenue, Glens Falls, New York 12801.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering and Maintenance-of-Way Association.

The firm of L. E. Peabody & Associates, Inc. specializes in analyzing matters related to the rail transportation of all commodities. As a result of my extensive economic consulting practice since 1971 and my participation in maximum-rate, rail merger, service disputes and rule-making proceedings before various government and private governing bodies, I have become thoroughly familiar with the rail carriers and the traffic they move over the major rail routes in the United States. This familiarity extends to subjects of railroad service, costs and profitability, cost of capital, railroad capacity, railroad traffic prioritization and the structure and operation of the various contracts and tariffs that historically have governed the movement of traffic by rail.

As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic

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problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with single car and multiple car movements, unit train operations for coal, grain, oil and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United States. The nature of these studies enabled me to become familiar with the operating practices and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected and studied both railroad terminal and line-haul facilities used in handling various commodities. These operational reviews and studies were used as a basis for the determination of the traffic and operating characteristics for specific movements of numerous commodities handled by rail.

I have frequently been called upon to develop and coordinate economic and operational studies relative to the rail transportation of various commodities. My responsibilities in these undertakings included the analyses of rail routes, rail operations and an assessment of the relative efficiency and costs of railroad operations over those routes. I have also analyzed and made recommendations regarding the acquisition of railcars according to the specific needs of various shippers. The results of these analyses have been employed in order to assist shippers in the development and negotiation of rail transportation contracts which optimize operational efficiency and cost effectiveness.

I have developed property and business valuations of privately held freight and passenger railroads for use in regulatory, litigation and commercial settings. These valuation assignments

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required me to develop company and/or industry specific costs of debt, preferred equity and common equity, as well as target and actual capital structures. I am also well acquainted with and have used the commonly accepted models for determining a company's cost of common equity, including the Discounted Cash Flow Model ("DCF"), Capital Asset Pricing Model ("CAPM"), and the Farma-French Three Factor Model.

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the Interstate Commerce Commission ("ICC") and the Surface Transportation Board ("STB") for the development of variable costs for common carriers, with particular emphasis on the basis and use of the Uniform Railroad Costing System ("URCS") and its predecessor, Rail Form A. I have utilized URCS/Rail form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.

I have frequently presented both oral and written testimony before the ICC, STB, Federal Railroad Administration, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, rail traffic and operating patterns, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations or damages, including interest. I presented testimony before the Congress of the United States, Committee on Transportation and Infrastructure on the status of rail competition in the western United States. I have also presented expert testimony in a number of court and arbitration proceedings concerning the level

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of rates, rate adjustment procedures, service, capacity, costing, rail operating procedures and other economic components of specific contracts.

Since the implementation of the *Staggers Rail Act of 1980*, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of shippers. Specifically, I have advised shippers concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity and cost-based ancillary charges.

I have developed different economic analyses regarding rail transportation matters for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Chemistry Council, American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, the Chlorine Institute, Coal Exporters Association, Edison Electric Institute, the Fertilizer Institute, Mail Order Association of America, National Coal Association, National Grain and Feed Association, National Industrial Transportation League, North America Freight Car Association and Western Coal Traffic League. In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various transportation-related problems.

In the two Western rail mergers that resulted in the creation of the present BNSF Railway Company and Union Pacific Railroad Company and in the acquisition of Conrail by Norfolk Southern Railway Company and CSX Transportation, Inc., I reviewed the railroads' applications including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that

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existed before the proposed mergers and acquisition. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

I have participated in various proceedings involved with the division of through rail rates. For example, I participated in ICC Docket No. 35585, *Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al.* which was a complaint filed by the northern and mid-western rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and mid-western rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, *Notice of Intent to File Division Complaint by the Long Island Rail Road Company.*

ROBERT D. MULHOLLAND
STATEMENT OF QUALIFICATIONS

My name is Robert D. Mulholland. I am an economist and a Senior Vice President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at: 1501 Duke Street, Suite 200, Alexandria, Virginia 22314; 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737; and 7 Horicon Avenue, Glens Falls, New York 12801.

I am a graduate of George Mason University's School of Public Policy, from which I obtained a Master's degree in Transportation Policy, Operations & Logistics, and Bowdoin College, from which I obtained a Bachelor of Arts degree in Government and Legal Studies. I have been employed by L. E. Peabody & Associates, Inc. since 2008 and from 1995 to 2004. From 2004 to 2006, I was the staff economist for the Office of Freight Management and Operations of the Federal Highway Administration ("FHWA") of the United States Department of Transportation ("USDOT"). From 2006 to 2008, I worked for ICF International as a consultant in the transportation group.

L. E. Peabody & Associates, Inc. specializes in analyzing matters related to the rail transportation of all commodities. As a result of my extensive consulting experience since 1995 and my participation in and support of maximum-rate, rail merger, service dispute, reasonable practices, and rule-making proceedings before various government bodies, I have become thoroughly familiar with the major freight and passenger rail carriers in the United States. This familiarity extends to subjects of railroad costs and revenues, service, maintenance, operations, capacity, traffic prioritization, and contract and tariff terms that govern the movement of commodities by rail.

As a consultant, I have directed and conducted economic and operations studies and prepared reports for passenger and freight carriers, shippers, federal agencies, the United States

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Congress, associations, and other public bodies dealing with transportation and related economic issues. Examples of studies I have participated in include organizing and directing rail facilities analyses, quantifying the impact of service disruptions for shippers, evaluation of traffic and operating factors in connection with single and multiple car movements and unit train operations for various commodities, rate and revenue division analyses, and other studies dealing with transportation markets for many commodities over various surface modes throughout the United States. Through these studies I have become familiar with railroad costing and operating practices.

I have inspected and studied railroad terminal facilities used in handling various commodities to collect data that were used as a basis for the determination of traffic and operating characteristics for specific movements handled by rail. I have conducted field studies of short line rail systems and rail spurs, and industry-owned rail facilities, and developed reports assessing their capacity to accommodate various projected operating scenarios and traffic levels.

I have developed operational and economic studies relative to the rail transportation of coal, chemicals, intermodal traffic, and other commodities on behalf of shippers, including analyses of the relative efficiency and costs of railroad operations over multiple routes. The results of these analyses have been used to assist shippers in the development and negotiation of rail transportation contracts that optimize operational efficiency and cost effectiveness.

I have presented written testimony before the STB related to the development of evidence including rail traffic volume and revenue forecasts, cross-over traffic revenue divisions, and train operations in several maximum reasonable rate proceedings on behalf of coal and chemicals

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shippers, and the development of evidence including rail fuel consumption and cost determinations in an unreasonable practice proceeding.

I have supported the negotiation of transportation contracts between shippers and railroads. Specifically, I have conducted studies concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, and specific cost-based rate adjustment provisions. I have developed numerous variable cost calculations utilizing the various formulas employed by the Surface Transportation Board (“STB”) for the development of variable costs for common carriers, with particular emphasis on the basis and use of the Uniform Railroad Costing System (“URCS”). I have utilized URCS costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1995.

I have conducted different economic analyses regarding rail transportation matters for dozens of electric utility companies located in all parts of the United States, and for major associations, including the Chlorine Institute, the American Chemistry Council, the Chemical Manufacturers Association, the National Industrial Transportation League, and the Western Coal Traffic League. In addition, I have assisted numerous government agencies in analyzing and solving various transportation-related problems.

In the Western rail merger that resulted in the creation of the present Union Pacific Railroad Company, I reviewed the railroads’ applications including their supporting traffic, cost and operating data and developed detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that existed before the proposed merger.

While employed at FHWA, I was a member of the USDOT inter-agency working group that drafted the National Freight Policy. In addition, I served on the USDOT Freight Gateway

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Team, a group headed by the Undersecretary for Policy and composed of one representative from each of the surface modal agencies.

While employed at ICF International, I directed and conducted numerous analyses of the rail and trucking industries for federal transportation agencies including the Federal Railroad Administration ("FRA"), the Federal Motor Carrier Safety Administration ("FMCSA"), and the FHWA, including analyses of the current rail and trucking industries and forecasts of future trends in both industries.

**Summary of CPKC Initial Data Production -- Average of Weekly Report Data
And Comparison to Data Inputs Used by OEA in Models used to Develop EIS Tables
Which Quantify Projected Increases in At-Grade Crossing Delay**

Item (1)	No-Action Scenario (2)	Proposed Action Scenario (3)	Average of Weekly CPKC Report Data								Post-Merger	
			(5-year Pre-merger Period Historical Data)								Start 4/15	
			Start 4/14 2018 (4)	Annual 2019 (5)	Annual 2020 (6)	Annual 2021 (7)	Annual 2022 (8)	Thru 4/14 2023 (9)	5-year Average (10)	2023 (11)		
A. EIS Table Railroad Operating Inputs												
1. Assumed Train Speed Used in EIS Table Development (MPH)	40.0	40.0	1/									
2. Average Through Freight Trains per Day Used in EIS Table Development	3.41	11.41										
3. Average Through Freight Train Length Used in EIS Table Development	8,597.1	6,817.2										
B. CPKC Appendix B Railroad Operating Data (October 15, 2023 Data Production)												
primary key	measure name	variable name	sub variable nam	train routing variable								
4. 117	MD-W Line Tower B-35 and Tower B-17	transit_time_minutes	average		65.25	66.12	64.48	51.29	51.89	52.14	59.07	47.97 2/
5. 118	MD-W Line Tower B-35 and Tower B-17	transit_time_minutes	maximum		131.76	154.17	145.87	94.39	90.81	94.44	121.27	92.20
6. 119	MD-W Line Tower B-35 and Tower B-17	trains_per_day_count	average	departing_B35	1.25	1.47	1.51	1.45	1.29	1.03	1.38	1.62 3/
7. 120	MD-W Line Tower B-35 and Tower B-17	trains_per_day_count	average	departing_B17	1.27	1.46	1.52	1.39	1.24	1.08	1.37	1.54 3/
8. 121	MD-W Line Tower B-35 and Tower B-17	train_length_feet	percentile_25		5,387.4	5,729.2	5,648.9	5,624.1	5,712.5	5,690.4	5,637.0	4,599.6 4/
9. 122	MD-W Line Tower B-35 and Tower B-17	train_length_feet	percentile_50		6,327.5	6,385.4	6,147.6	6,551.9	6,838.2	7,414.1	6,509.9	6,367.4 4/
10. 123	MD-W Line Tower B-35 and Tower B-17	train_length_feet	percentile_75		7,381.2	7,713.4	7,434.2	7,882.0	8,522.9	8,611.5	7,855.5	8,011.9 4/
11. 124	MD-W Line Tower B-35 and Tower B-17	train_length_feet	maximum		9,963.8	10,121.5	10,471.5	10,644.8	10,952.4	11,006.0	10,488.7	11,004.1 4/
12. 125	MD-W Line Tower B-35 and Tower B-17	trains_over_10000_ft	count		0.42	0.92	0.94	1.19	1.60	1.21	1.06	1.50
C. Development of EIS Table Inputs from Reported CPKC Operating Data (Color Coded Line Items Correspond to Section A EIS Table Input Variables)												
13. Reported Transit Time Segment West End Milepost (CPKC October 15, 2023 data submission, p. 25)					40.3	40.3	40.3	40.3	40.3	40.3	xxx	40.3 5/
14. Reported Transit Time Segment East End Milepost (CPKC October 15, 2023 data submission, p. 25)					17.0	17.0	17.0	35.1	35.1	35.1	xxx	35.1 5/
15. Transit Time Segment Length (Line 13 - Line 14)					23.3	23.3	23.3	5.2	5.2	5.2	xxx	5.2
16. Implicit Train Speed in MPH (Line 15 ÷ (Line 4 ÷ 60 minutes per hour))					21.4	21.1	21.7	6.1	6.0	6.0	xxx	6.5 2/
17. Adjusted Transit Time Segment West End Milepost (Assumes West end MP Changes from 40.3 to 35.1 on 1/1/2021)					40.3	40.3	40.3	35.1	35.1	35.1	xxx	35.1 6/
18. Adjusted Transit Time Segment East End Milepost (Assumes East end MP Does Not Change)					17.0	17.0	17.0	17.0	17.0	17.0	xxx	17.0 6/
19. Transit Time Segment Length (Line 17 - Line 18)					23.3	23.3	23.3	18.1	18.1	18.1	xxx	18.1
20. Implicit Train Speed in MPH (Line 19 ÷ (Line 4 ÷ 60 minutes per hour))					21.4	21.1	21.7	21.2	20.9	20.8	xxx	22.6 2/
21. Total Through Freight Trains per Day (Line 6 + Line 7)					2.52	2.93	3.04	2.84	2.53	2.11	2.75	3.16 3/
22. Average Through Freight Train Length					4/	4/	4/	4/	4/	4/	4/	4/

1/ OEA assumed 40 MPH for all crossings except for the four (4) crossings in Bensenville closest to Tower B17 (25 MPH).

2/ Average train speed is not included in the required reporting, but it can be developed from reported transit time data and validated milepost data.

3/ Daily through freight train count is Included in the required reporting.

4/ Average Through Freight Train Length is Not Included in the Required Reporting, and cannot be calculated from the reported data.

5/ Segment definition changes as of 1/1/2021; See: CPKC October 15, 2023 data submission, p. 25.

6/ CPKC CPKC October 15, 2023 data submission, p. 25. is assumed to contain erroneous endpoints for the period beginning 1/1/2021.

Assumed required corrections shown in boxes on Lines 17 and 18.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of November 2023 a copy of the foregoing Petition to Modify Data Reporting Requirements was served on all parties of record in docket FD 36500 (Sub. No-6).

/ss/ Thomas W. Wilcox